THE

AMERICAN REVIEW

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HISTORY AND POLITICS,

AND

GENERAL REPOSITORY OF LITERATURE AND STATE PAPERS.

No. IV....October, 1811.

TO BE CONTINUED QUARTERLY.

—— neque enim levia aut ludicra petuntur
Præmia. Virgil, Lib. xii.

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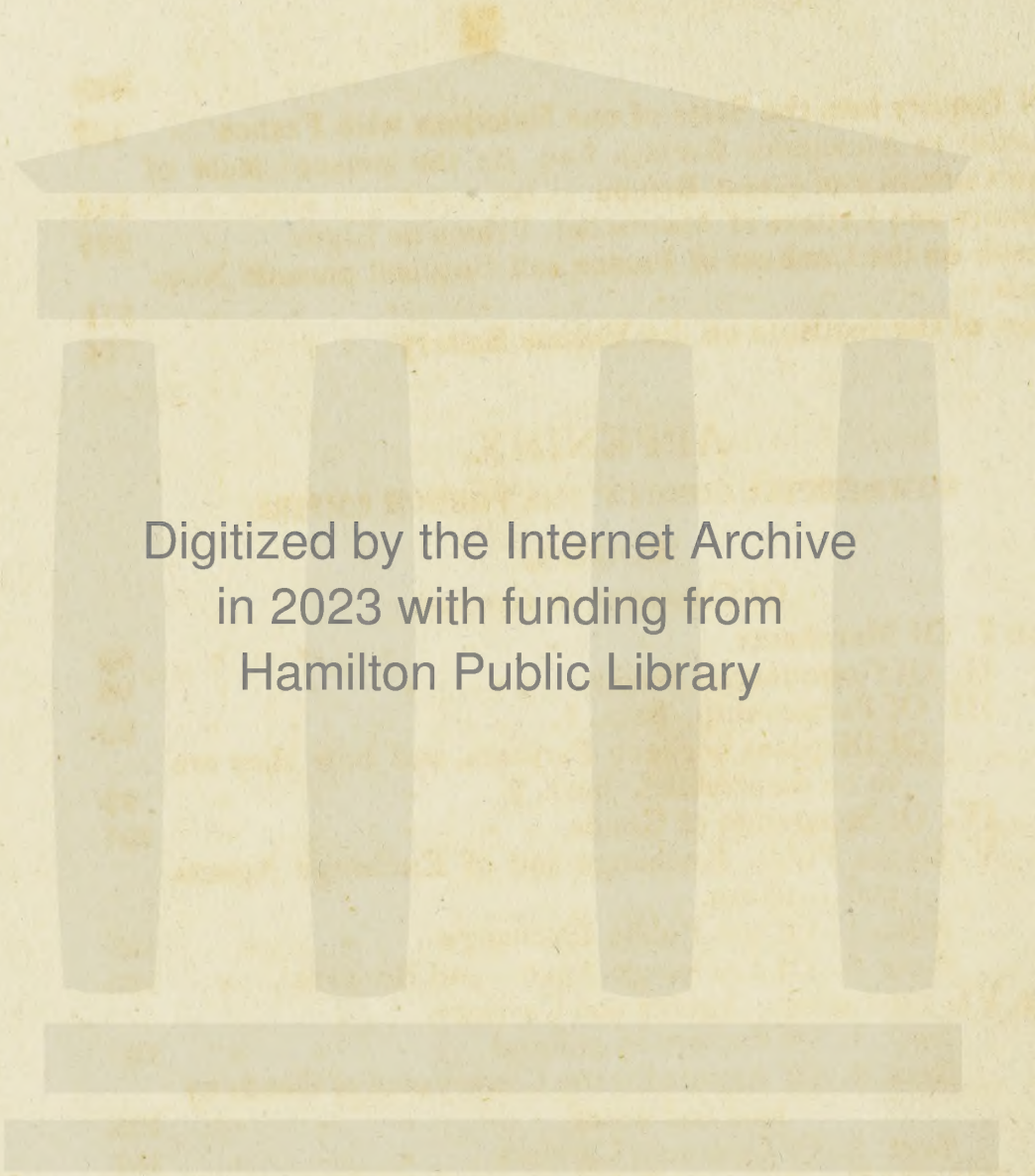

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THE

AMERICAN REVIEW

OF

History and Politics.

VOL. II. OCTOBER, 1811. No. II.

An Inquiry into the state of our relations with France.

O foolish Israel! never warned by ill,
Still the same bait, and circumvented still.—

DRYDEN.

IN the first number of this work, we examined in detail the history of our relations with the French government, from the date of the enactment, until that of the pretended revocation, of the Berlin and Milan decrees. Agreeably to our original design, the same subject should have been pursued chronologically, and discussed at large, in our second and third Numbers. Such, moreover, as we are informed, was the expectation of the public, to whose favour we are extensively indebted, and whose wishes we are, on this and every other account earnestly disposed to gratify. In resuming this topic, we should not, however, think it necessary to assign the reasons of the intermission which has occurred, did they not form a very natural and suitable introduction, to the opinions and arguments we mean presently to urge.

The chief cause, then, of the silence we have maintained, in relation to the proceedings of our government, during the last session of congress, was,—literally and truly,—the supreme and we may say, paralizing disgust which they occasioned;—the deep and overwhelming sense of shame, with which they inspired us as citizens of the American commonwealth. Contempt and indignation, however strong and stimulating, are not always of force to obtain utterance, when accompanied by

lively feelings of humiliation and sorrow. The mind involuntarily shrinks within itself, and recoils from the task, of narrating or stigmatizing baseness and folly, in the disgrace of which it is condemned to share.

In the month of April last we took up the pen, fully resolved to review the transactions of the house of representatives, and the course taken by the administration, during the term above mentioned; but in contemplating narrowly this tissue of tragical absurdities, so strong was the nausea which it excited, that we were utterly unable to proceed. The more faithful the picture,—the more complete the disclosure, which might have resulted from the successful accomplishment of our undertaking, the more distressing would have been our sensations. That which was said of a general of antiquity, reluctantly victorious over the troops of an ungrateful country, might be applied to a patriotic writer, in a case like the present,

Et dolet iratas tam valuisse manus.

We have always entertained the opinion, that it is far from being the duty of a good citizen, in ordinary circumstances, to emblazon the follies, or to publish even the vices of his government. There are temporary weaknesses,—occasional obliquities,—transgressions on the part of the state, which should be considered by him in the light of family-secrets, and which it is scarcely less than treasonable wantonly to reveal. To proclaim officiously,—from motives of personal resentment,—or with a view to personal advantage,—what tends to degrade the national character, is worse than mere indiscretion, and the very opposite of public virtue. It is, likewise, for the most part bad policy in the satirist; for the general good of the community is the particular interest of every individual, and the national disgrace suffered more or less *in solidum*, by all the members of the republic. These considerations had their full weight with us, when we undertook, in our first volume, to expose the dishonourable pusillanimity of our administration, in their deportment towards France, and conspired with the sentiments of disgust of which we have spoken, to occasion the subsequent suspension of our labours with respect to the same point. We experienced in the outset, what we still feel;—the bitterest reluctance at joining openly in that harsh sentence of reprobation, which we think every impartial and reflecting man, both at home and abroad, must inwardly pronounce, on the character and conduct of those, to whom we have confided the public weal.

But, if the doctrine stated in the preceding paragraph be sound, and worthy of attention, there is another applicable to our case, of much higher moment, and the prevailing influence of which, has enabled us to overcome every obstacle, to that unrestrained expression of our opinions and feelings, in which we shall hereafter indulge. Under such a government as this of the United States, it may happen, that the majority of the rulers are in fact "men without honour, without energy "and without just notions of policy;" uniformly the sport of the blindest prejudices, and incurably deficient in political wisdom;—that impelled by the worst passions, they have brought the state to the verge of irretrievable ruin; that no hope of safety remains for it but in their exclusion from office, and a total revolution of system; that the most efficacious means of accomplishing this object, is to paint in vivid colors, to the people, the conduct of those who employ the power vested in them, only to the disgrace of the American name, and to the destruction of the public interests. In a conjuncture like the one here supposed, all delicacy is fastidious, and unseasonable. Every consideration of tenderness must be waived. A true friend of the country, whose pursuits admit of the effort, will proceed to urge the abuses prevailing in the administration of the public affairs, with all the energy of enlightened attachment, and all the vehemence of honest indignation. Whatever temporary loss of reputation, the nation may then suffer, by a full exposition of the demerits of her rulers, is chargeable upon them alone.

While we were rendered, from the cause we have assigned, almost incapable of resuming in our two last numbers, the subject of our foreign relations, we felt indeed, no great anxiety to enter upon it at so early a period. It appeared to us even advisable to postpone the discussion, until the gross imposture of the revocation of the anti-commercial decrees, had made itself fully apparent even to the most credulous. We were confident, that this must be the case, at no very distant era, and that the predictions on the subject contained in our first Number, would be completely verified in the sequel. Our readers may recollect that we represented this measure of Bonaparte in the twofold character, of a device to relieve the immediate necessities of his exchequer,—*une piece de circonstance*,—and of a snare to entangle the United States in his atrocious league against Great Britain.

We asserted that notwithstanding the counterfeit repeal, the spirit of trade would not be suffered to revive on the continent of Europe;—that its movements would be but little quick-

cned,—and that our merchants would reap no solid advantage, whatever might be the alacrity or simplicity with which their government received the mock embraces of the tyrant.* We know not, indeed, who it is of the description of attentive and sagacious observers, that does not see in the present condition of affairs, a complete confirmation of all that we have heretofore advanced on this subject. The reverse, however, is still maintained among us, from the obstinacy of party-feelings in some, the treacherous spirit of faction in others, and the force of credulity with many, who are so far the dupes either of their own eager wishes, or of bold assertions, as to be insensible to the testimony of experience. We would nevertheless, willingly have remained silent somewhat longer, knowing that every succeeding day would bring additional evidence in favour of our opinions. We still cherished, moreover, a faint hope that our administration, who had—to employ a familiar metaphor of Bolingbroke—swallowed the bait with so much avidity, would not continue voluntarily to hang upon the hook, after they discovered the nature, and began to feel the evils, of the deception practised upon them.

But we are left without option, by the near approach of that portentous catastrophe which, as we originally stated, the letter of the duke of Cadore was, by his master, especially intended, and from the congenial policy of our administration, directly calculated to produce. When we undertook to explain the true spirit of the transaction, we foretold the uses to which it would be applied, by the demagogues of the predominant party, and the fatal consequence to which it might lead. The activity of the evil has, however, outstripped our calculation; and the zeal exerted by our Executive,—of whose *dispositions* we never had a doubt,—in seconding the designs of Bonaparte, has proved to be more ardent and speedily efficacious, than we could readily have imagined. We are brought perhaps to the verge of a war with Great Britain, or rather,—to name the heaviest of the calamities which can fall upon us,—to that of a close alliance with France. It is impossible to look back without shame and indignation, upon the means by which we have been hurried to this awful extremity, or to look forward without horror and dismay to the evils with which we are menaced. This prospect it is, which forces us to an immediate attempt, if it be not now too late, to divert the people of this country, from a career of certain destruction. The mode in which we shall interpose our humble powers for the attainment of this end will be, to discuss again the question of the repeal of the

* P. 72. 1 vol. A. Review

Berlin and Milan decrees, and the true character of our commercial relations with France. To be induced to oppose without delay and with effect, the further and final execution of the plan, which we conceive to have been laid for involving us in French alliance, nothing more, we presume, can be wanting for the great majority of this nation, than the conviction that France still violates our rights and proscribes our trade; that our executive has sacrificed the public honour and interests to avert the resentment and promote the views of one belligerent, while he has studiously rejected the friendship, and provoked the hostilities of the other; that a coalition with the despotism of France, would cast an indelible stain on our annals, and prove fatal to our morals, our republican institutions, and our prosperity in all its branches. If the limits we have assigned to this article do not allow us formally to discuss the second and third positions, the proof of them will at least be found, in the observations we shall interweave with the regular discussion of the first.

Before we proceed to investigate the main points of our subject, it may not be amiss, to dwell upon the disposition by which the French government is, and must necessarily be animated, towards commerce and neutral privileges in general. This topic can, indeed, prefer no claim to novelty, and has heretofore fallen incidentally under our consideration. It bears, however, an important and immediate relation, to the particular question we shall have before us, and should be previously exhibited to the mind of the reader, to enlighten his views, and to prepare him for the formation of a sound judgment, concerning the latter. Whoever among us is made to see,—what it is not certainly very difficult to discern,—irresistible proof in the analogies of reason, and the current of experience, that Bonaparte, or the imperial despotism which he represents, is, both from necessity and temper, the implacable and indefatigable foe of trade in any shape and of neutral rights, has been carried far in the right solution of all the political problems, whether as to matters of opinion or of action, which the concern of interest, of honour, or of safety can present to an American.

Long since the doctrine was advanced by one of our own body, that Bonaparte had commenced a systematic war on commerce, and was labouring to destroy the whole modern edifice of public economy, of which it is the basis. His intentions in this respect were deduced, from the obvious incompatibility of the spirit of trade with the genius of a military despotism, and the accomplishment of a plan, of universal dominion;—from his personal character and habits;—from his oc-

casional declarations, and a series of measures with regard to commerce, of a nature equally unequivocal. It was supposed that he could not be ignorant, of the irresistible tendency of a flourishing commercial industry, to produce an enterprising love of civil liberty, an aversion for the trade of arms, elevation of sentiment, and energy of character,—dispositions essentially hostile to his leading passions and his favourite views. There could be no good ground for imagining, that he was unacquainted, or was not duly impressed, with the confirmation yielded by experience, to a doctrine so fully warranted by the philosophy of our nature. The spirit of trade contributed, principally, to the establishment of limited monarchy and civilized freedom, on the continent of Europe, which had languished for several centuries under the pressure of feudal and military despotism. In its first struggles with this ferocious dominion, which were only those of opposite interests, it experienced no active or regular hostility, because the true character and extent of its energies were not even suspected. It was either contemptuously overlooked, or improvidently encouraged, until it acquired a degree of strength, such as to bid defiance to all ulterior opposition. The force which it can, and the influence which it must necessarily exert, when suffered to flourish, cannot now be mistaken by any inquiring mind, and much less by one of the character of the Emperor of France, who, moreover, so well knows the true foundations upon which his fortunes rest.

The commercial power and spirit of the continent of Europe were unable to withstand, the first and unexpected shock, of the new military system of France, aided as the latter was, by the domestic infirmities of every government which she assailed. But that power and spirit, if allowed to revive, would combat vigorously, and speedily vanquish the military mania. The despotism of Bonaparte, which owes its existence to a combination of anomalous and unexpected events, cannot be long sustained, and certainly not perpetuated, unless the minds of men be studiously diverted to other habits and enjoyments, to other objects of admiration and desire, than those which are inseparable from the pursuits of trade. The plans of the conqueror we believe to be accommodated to this doctrine, and it is scarcely necessary to suggest that his personal feelings are in unison with it—"Ships, colonies and commerce" were indeed at first supposed to be objects near to his heart, and the expedition to St. Domingo during the last peace seemed to confirm this conjecture. We ourselves think that colonial possessions were *then* eagerly desired, but only, inasmuch as they seemed fitted to accelerate the gratification of one of the

most ardent and inveterate of his passions,—the destruction of England. They were sought as temporary means of annoyance, not as sources of wealth, of permanent power, or of domestic prosperity. They would have been, and if attainable, would now be used, as seasonable *auxiliaries*, in "the punic war." Commerce, as their necessary concomitant, might be tolerated, but still in the most contracted sphere. But ultimately the anti-commercial policy would prevail and be rigorously executed.

Although few concurred in imputing this policy to the French government, when the suggestion was first made to the world, the case is now materially altered. The conduct of Bonaparte with respect to trade, for some years past, has satisfied the majority of thinking politicians, that the imputation was just. In proportion as the nature and tendency of his system of government, have been more fully developed, has this persuasion become more general. The whole tenor of his domestic and foreign policy, since the renewal of the war, leads immediately and necessarily to this conclusion. The theory deducible from the genius of his government, and his personal character, is firmly established by his measures and declarations, uniformly—avowedly hostile to trade in any shape. All conspire to prove, that he acts upon a systematic plan for the extinction of the spirit of commerce, and the depression of the arts of civil life throughout the world.

The astonishing industry and the barbarous rigor which he has displayed, in reducing his own dominions, as well as the rest of the continent, to their present condition with respect to trade, must have some other source than his hostility to England. We know well with what passionate eagerness and inveterable rancor, he labours for the destruction of that country; but we are satisfied, that his scheme for the accomplishment of this object, is too judiciously contrived, to embrace what cannot injure her, and yet tends to render his own dominion more odious. Of this description, however, is the great body of those regulations and extortions, by which commercial and manufacturing industry is crippled and beggared throughout the continent, with little or no emolument for the French treasury, with no positive or immediate accession of strength to his power, and with no relation whatever, but what is exceedingly remote and indirect, to the concerns of his enemy. We cannot, moreover, be persuaded that he seriously expects to accomplish the ruin of England, by the furious war which he now wages on her manufactures, or by the proscription of all maritime trade throughout the continent, with the exception only, of that miserable remnant which, for fiscal purposes, he

now suffers to skulk as it were, in the ports of France. Whatever may be his professions, he is too well apprised of the domestic strength of his antagonist, of the variety and opulence of her resources, of the breadth and solidity of the basis upon which her grandeur reposes, to hope seriously for her overthrow by such means, even on the supposition that he could succeed in cutting her off, from all communication with the continent.

The humiliation of England is, undoubtedly, in some degree the *inducement*, but she is also in part the *pretext*, for his measures with respect to trade. He has declared that maritime commerce must be abandoned, *until* he can dictate conditions of peace to his enemy. The truth is, that then only would the cause of trade become desperate; then only would he be able to triumph completely over its spirit, and the principles of freedom, which, as he well knows must be always formidable as long as she exists, and could not survive her fall. Such is his real view of the case; such his fixed and necessary policy.

We are credibly informed that the opinion which we here express, is, at this moment, the settled conviction of almost every intelligent individual of the commercial, and manufacturing classes of France. They cherish no hope of real or permanent patronage from their government, so steadily adverse is the operation of its real policy, so uniformly disastrous is their experience, notwithstanding the galling rodomontade of friendly professions and decrees, by which they are, from day to day, mocked and tantalised. They, who are condemned to feel, and to suffer, know how to appreciate all the splendid promises and representations, of which they are occasionally the subject; the pretended solicitude so ostentatiously announced in favour of the activity of internal trade; the magnificent premiums offered for the successful culture of foreign products, and for the improvement of manufacturing machinery.—They can trace all this to the wary and habitual duplicity of a government, which conducts its favourite plans, in masquerade; which has, elaborately and successfully, organized falsehood into a vast system, and constituted it the basis of the imperial dominion,—"the soul of all its public acts." According to this mystery of fraud, the phrases of "a flourishing industry," and "the freedom of navigation" will continue to be audaciously paraded in official speeches and papers, as long as it may be deemed expedient, to maintain the faint illusion that may still prevail, with respect to the real objects of the French cabinet, and to attach to Great Britain, the odium of prolonging the calamities of war, and of oppressing the trade of the world.

The time is not yet come when "the scourge of God" can, consistently with his safety or interest, throw off all disguise, if it could be supposed that, under any circumstances, his nature and habits would allow him to dispense with the agency of fraud. England is yet too powerful, the nations of the north are not yet sufficiently abject and feeble, the commercial and manufacturing interests are yet too strong throughout the greater part of the Continent, and even in France herself, to render it safe for him to proclaim openly and without reserve, the whole extent of his fatal designs. As yet he dares not provoke in his intended victims, the fearful energy of despair, nor purposely stifle in their breasts, all hope of existence or prosperity, from any other than a source exterior to himself. He still fears, and would, therefore, still continue to delude, as well as to intimidate, those whom he systematically oppresses, and incessantly labours to destroy. Such, indeed, must, at all times, be more or less the case. Every despot is condemned to feel, while he inspires fear.

Qui sceptra duro sævus imperio regit
Timet timentes; metus in auctorem redit.

SEN.

Were it not for the loud descant which is now chaunted among us, in praise of the temper of Bonaparte towards our neutral rights, we should certainly deem it superfluous to enlarge upon his dispositions with respect to the prerogative of independence in nations, and neutral privileges in general. Our own sad and invariable experience on this head, during the last four years, the deep wounds under which we are still smarting, the acknowledgments and lamentations so recently extorted and wrung even from the most prostitute and credulous of the partizans of France, would seem sufficient to induce a unanimous and indignant rejection of any understanding with the French emperor, implying a disposition or an intention on his part, to practise either justice or friendship in his future relations, with this or any other country. Consistency, modesty, common prudence, every maxim of wisdom, every principle of honour appear to require, that, so far from rushing headlong to mingle our interests and our councils with those of *the author of the Rambouillet decree*, upon the first equivocal and insidious profession of his good will, we should both reason and act, openly and inflexibly, upon the reverse of this supposition;—at least until we have received some indemnification for past losses, and until his pretended reformation be tested by time. We are not, however, universally

alive to these considerations, simple and forcible as they may seem. Something more is still wanting than the lessons of our own case, to awaken us to a proper sense of the unchangeable character of the individual, with whom we have to deal.

"The indulgence of a sort of undefined hope," says Mr. Burke, when speaking of the light, in which the first revolutionary usurpers of France were viewed both at home and abroad,—"an obscure confidence that some lurking remains of "virtue, some degree of shame, might exist in the breast of the "oppressors of France, has been among the causes which have "helped to bring on the common ruin of the king and people."* This observation may be well applied to the public feeling in the United States, and perhaps among some of the nations of Europe, in relation to Bonaparte. The prevalence of a delusion similar to that here described has conduced materially to the success of his schemes of conquest on the Continent of Europe, and should we not soon be undeceived, may lead to the triumphant accomplishment of his designs on this country. It betrays and disarms those who are exposed to his omnivorous ambition; renders them careless of timely precautions; feeble and irresolute in their opposition to his intrigues. The same profound writer whom we have quoted above, justly remarks, that there is no safety for honest men, but by believing all possible evil of bad men, and by acting with promptitude, decision and steadiness on that belief.†

If any thing can be effectual when our own bitter experience has proved insufficient, to dissipate all reliance on the moderation or justice of the French emperor, it must be the contemplation

* Letter to a member of the National Assembly.

† Ibid. The sequel of this passage is no less in point, and not less worthy of the attention of the American public.

"There are cases in which a man would be ashamed not to have been im-"posed on. There is a confidence necessary to human intercourse, and without "which men are often more injured by their own suspicions, than they would "be by the perfidy of others. But when men, whom we *know* to be wicked, "impose upon us, we are something worse than dupes. When we know "them, their fair pretences become new motives for distrust. There is one "case indeed, in which it would be madness not to give the fullest credit "to the most deceitful of men, that is, when they make declarations of hos-"tility against us.

"Your state doctors do not so much as pretend that any good whatsoever "has hitherto been derived from their operations, or that the public has "prospered in any one instance, under their management. The nation is "sick, very sick, by their medicines. But the *charlatan* tells them that what "is past cannot be helped;—they have taken their draught, and they must "wait its operation with patience;—that the first effects indeed are unplea-"sant, but that the very sickness is a proof that the dose is of no *sluggish* ope-"ration;—that the body must pass through pain to ease, &c."

of his deportment, towards the nations immediately within the range of his power. Our limits and object will not permit us to develop this subject fully, nor indeed is it desirable that we should retrace here, a group of horrors which has been so minutely, and glowingly depicted, by other and abler hands. We shall therefore be satisfied, with merely recalling to the recollection of the public, some of the most flagrant of the instances of foreign usurpation, chargeable upon the imperial government of France. Many of the circumstances attendant on the oppression of Portugal, and the erasure of Holland from the list of nations, are, however, of so peculiar a character and so hideously illustrative of the complicated depravity of the usurper, that we shall not be well able to refrain from noticing them in detail, in order, if possible, that no part of the benefit of so instructive a warning may be lost to our readers. The case of Spain, of all the enormities recorded of human guilt, the most abominable in its nature, and the most pernicious in its effects, we shall not attempt to describe. The simple narrative of the facts already so familiar to the world, is in itself sufficient to awaken all the emotions which could be expected to result, from the agency of the most consummate powers of description or of reprobation, that were ever exerted in the cause of virtue or honour.

However useful to our purpose the history of the cozenage and the devastation of Spain, we must confess that for the reputation of human nature, and for the interests of the American name, we could almost wish that an impenetrable veil were for ever thrown over these terrible scenes. With respect to the conduct of the American administration, in relation to this subject, we have but one faint consolation. Should the free government of the United States continue to flourish a century hence, and the spirit of our revolutionary patriots animate the breasts of the people who will then be in the enjoyment of the fruits of their struggle, that people may reject as a sacrilegious perversion of their annals,—as spurious and malignant,—the tradition which records, that we,—the immediate descendants of those who threw off the British yoke,—disclaimed all sympathy—all political communion, with the victims of so monstrous a combination of cruelty and fraud;—nay, even sought the alliance and rejoiced in the triumphs of the usurper, at a moment too, when, after having laid waste and deluged with blood the theatre of his hellish enterprise, so far from manifesting either compunction, or irresolution, he was, with a ferocity heightened by disappointment, and a rancor embittered by opposition, collecting

all his strength for new and mightier efforts, destined to consummate, not merely the ruin of the Peninsula, but that of the cause of freedom throughout the Continent of Europe. With our posterity, and with the high-minded and intelligent among our contemporaries, the circumstance that the Spaniards have not displayed in their own defence, all the wisdom which their safety demands, or all the energy which their injuries are fitted to inspire, will not serve as our vindication.

> To the generous eye,
> Distress is virtue; and, though self-betrayed,
> A people struggling with their fate must rouse
> The hero's throb. THOMSON'S LIBERTY.*

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* Or in the just language of another poet,

> The state that strives for liberty, tho' foiled
> And forc'd to abandon what she bravely sought,
> Deserves at least applause for her attempt,
> And pity for the loss.

How ardently do we not wish to see realized in the case of Spain what follows in the same passage of Cowper:

> But that's a cause
> Not often unsuccessful: pow'r usurped
> Is weakness when opposed; conscious of wrong,
> 'Tis pusillanimous and prone to flight.

We must confess, however, that we still tremble for the fate of the Peninsula, notwithstanding the glorious efforts and the brilliant achievements of the British. Passionately eager as we are for the final triumph of their arms, we yet can scarcely venture to cherish the expectation of such a result. We cannot comprehend how they are to resist for any length of time, the force which will be brought to act against them, without a cooperation on the part of those whom they defend, of another kind from that which is now lent. It is not enough that the Spaniards and Portuguese should hate their invaders. To insure their final liberation, there should be wisdom and providence in their councils, energy and unity in their military operations, skill in their commanders, a strong attachment and implicit deference to their protectors. Judging from the accounts of the English travellers who have recently traversed Spain, and from the state of her military force, we are compelled to conclude that the very reverse is the case. Should Bonaparte accomplish her subjugation, she will in all probability be annexed to the French empire. His intentions on this subject are distinctly announced in the notes given by the Moniteur of the 26th of February last, on the Prince regent's speech at the opening of parliament. Some part of these notes is exceedingly curious, and deserves to be laid before our readers. There is, we think, much truth in what is said, with respect to the improbability of the final success of the British arms in Portugal.

"While you are exhausting yourselves on all sides," says the official paper addressing the British,—"the French army, conformably to our *fundamental law on this head*, lives upon the country in which it carries on the war, and costs France nothing more than the pay of the troops, which she would be obliged to defray wherever they might be."

"If Massena having received his reinforcements and his beseiging artil-

This sentiment of the poet must be that of every truly noble and virtuous heart. There can be no real love of liberty, where there is not a determined, implacable hatred for oppression;—no security for the continuance of free institutions, or of na-

lery, marches upon you, after having silenced your batteries, or if you march against him, what will be the consequence? If you are victorious, you will finally gain nothing; for you will have scarcely advanced two steps, before you will encounter new armies. If you are vanquished, you are lost."

"We do not know what are precisely the views of the cabinet of the Thuilleries, but we heartily wish that the prince of Esling would continue to manœuvre, instead of attacking you, and keep you thus at bay for some years. The result would be—for you,—a hundred millions more added to your national debt, and for us the certainty of a more complete subjugation of the Peninsula. Where so large an extent of continent is concerned, what is the matter of a few years. All nations that have been subdued, defended themselves for several years. You alone set the example, before unknown to history, of a nation overcome in a single battle, and so completely subjected to the Normans your conquerors, that your laws, your usages, and your all was wrested from you by a single victory."

"Is it probable that England can contend against France in Spain? This is the whole question. She could not do it, when considerable Spanish armies occupied Saragossa, St. Andero, Bilboa and Burgos. The fine army of Moore was compelled to fly with the loss of every thing.—England could not do it at the period of the third coalition. Wellington advanced as far as Talavera: he obtained there some advantages; but he was almost immediately after obliged to abandon his hospitals and his sick, and to take refuge in Portugal. The presence of Moore could not prevent the defeat of the Spanish armies under Blake and Castanos, and the capture of Saragossa and Madrid. Wellington victorious at Talavera could not prevent the passage of the Sierra Morena, the occupation of Seville, Grenada, &c. And if it be admitted, as no man of sense can doubt, as the English generals themselves declared after the expedition of Moore, that it is impossible for them to defend the Peninsula, why do they expose themselves without any hope of success? The effect of the conduct of England will be in this instance, as it has been in all others, to consolidate the power of France."

"*England, although convinced by experience that she could not defend Spain, has, without doubt, given employment to* 300,000 *Frenchmen; but Spain conquered foot by foot will be entirely subdued, and England may charge herself with having compromitted the independence and the integrity of Spain. The conquest of Spain will lead to consequences very different from those of a mere change of dynasty, which would have imparted to her the benefit of the reforms and liberal ideas introduced by a young, firm and vigorous government. Posterity, for whom years are but as an instant, will ascribe to the improvident policy of England alone, the important results which will redound so eminently to the advantage of France.*"

"The English government cannot sustain its credit with a losing commerce. It is directly affected by every individual failure. The French government on the contrary, has a credit independent of bankers and mercantile houses.—Nine hundred millions of revenue received in hard money, the revenue of the empire itself, represents the wealth of her soil, and is more than sufficient for all her expenses (*tous ses services.*)"

So much for the observations of the Moniteur. Our readers will do well to compare the boast made relative to the sufficiency of the internal revenue for all the public expenses, with the following passage which we extract from the report of the French minister of finance concerning the budget of 1808, opened the last year to the legislative assembly.

"It is probable," says the minister addressing Bonaparte, "that some ad-

tional independence, if those who enjoy and cherish them at home, are not indignantly alive to the abominations of tyranny abroad, and at all times eager to protect, or disposed at least to countenance, the cause of liberty and justice wherever endangered. Admitting that the Spaniards are unfaithful to themselves, ungrateful to their magnanimous protectors, prone to ignorance and to slavery, the guilt of the invader is not the less monstrous, nor the general tendency of his usurpation the less formidable;—the reputation and the interests of a moral and republican people like that of the United States, do not the less imperiously and evidently require, that they should proclaim without reserve their abhorrence of his crimes, and exert indefatigably their utmost vigor to frustrate the accomplishment of his views. It would not seem to be within

ditional funds will be yet necessary for the discharge of the engagements of the two last years. They will, however, be of no great consequence, thanks to the succours which victory, always obedient to the genius of your majesty, has procured for us: the expenses of the two departments of war alone, amounted, including the extraordinary supplies of every kind which the troops drew from the conquered countries, to about six hundred millions, for each of the fiscal terms (*exercices*) of 1806 and 1807—the first composed of fifteen months; and nevertheless, the treasury of your majesty did not furnish more than four hundred and sixty, for this, nor more than three hundred and forty, for 1807. All the surplus was the fruit or harvest of those triumphs by which your majesty astonished Europe; *and it is evident that without this aid, the reestablishment of the war tax suppressed three years ago and a recourse to other resources in addition would have become indispensable.*"

"As for the fiscal term (*exercice*) of 1808, the difference between the receipts and the expenditure, arises, on the one hand, from the circumstance that the customhouses yielded much less than in the preceding years, and on the other from this, that the public expenses have been carried beyond the limits which had been provisionally assigned them."

"Your majesty will not be surprised at this, if you will deign to observe that the greater part of your troops remained within the French territory during that year, and that the preparations made during the same year for the war in Spain, have occasioned an augmentation of expense, which has caused that of the two war departments to amount to five hundred and eighty millions."

"The fiscal term (*exercice*) of 1809 is yet too recent to enable me to state at this moment, the precise amount of its receipts and expenditure; but we may conjecture that the war expenses cannot have been less than six hundred and forty millions, of which the public treasury will defray but three hundred and fifty.

"If the year 1809 has been extremely expensive, every thing intitles us to believe that that of 1810 will afford scope for large savings. In fact, your majesty made a levy of 200,000 men in 1809, and seems to intend to raise none in 1810. Sixty thousand horses were purchased and equipped in 1809; it appears that your majesty does not purpose to buy any in 1810. Your majesty hopes also to be able to reduce your military establishment by 200,000 men, and to limit it to 700,000—one half destined for the operations to be conducted in Spain,—the other half for the defence of the coasts and for maritime expeditions, &c. &c."

the order of the equitable dispensations of Divine Providence, that a nation situated as we are,—and yet unmoved by the spectacle of the fell tragedy now acting in Spain,—callous to the unparalleled wrongs and the cruel sufferings of an entire continent,—patient under the horrible and portentous iniquity of their author,—insensible to the dangers with which she herself is threatened by the spirit and example of his attempts,—it would seem, we say, not to be within the order of the equitable dispensations of Divine Providence that a nation so disposed, should be long permitted to enjoy the political and social blessings which now signalize our lot.

But to proceed to other and scarcely less revolting instances of perfidious and destructive aggression on national independence, committed by Bonaparte since his accession to the Imperial throne. Our readers, themselves republicans, cannot have forgotten the fate of Switzerland, the nurse of republican sentiments and manners on the Continent of Europe. After having suffered from the revolutionary governments of France, all that the most sanguinary violence, and the most insatiable rapacity could inflict, her free institutions and her national independence were at one blow extinguished by the French ruler, under the pretence of stifling internal dissensions, which he himself had treacherously excited, with the view of completing her subjection. The title of "Mediator of Switzerland," obtained by the arts of corruption and the terrors of the sword, is virtually and in its uniform operation, synonymous with that of master. The unhappy Cantons, broken in spirit, wasted in strength, and stripped of all means, are governed by the law of conquest, and will, ere long, when the special purposes of tyranny and rapine for which they are now suffered to maintain a separate existence, shall be gratified, be formally incorporated with the empire. The case of Venice,*—of Piedmont,—of the Valais,—of Tuscany, annihilated as in-

* Venice, comparatively a *free* and at all times a *commercial* state, was first ingulfed in the polluted despotism of France. Her *characteristics* were such as to require the early extinction of her independence and alteration of her habits. *Piedmont* and the *Valais* were incorporated with the empire in order to complete its *arrondissement* and that "the interests of Switzerland might harmonize with those of France and Italy." In the case of the kingdom of Etruria created by Bonaparte himself, but not long after annexed to the empire, as "an inseparable portion of it," one usurpation was made a precedent for another.

"The same first principles," it was said, "in consequence of which Genoa was incorporated with France, rather than with the kingdom of Italy, required this measure; and from Leghorn to Toulon, to Genoa, to Corsica, was not farther than to Milan."

Another

dependent states without even the allegation of a motive, other than that of political convenience, and personal aggrandizement, need not be dwelt upon, as it can admit of no difference of sentiment. The same observation may be applied to the spoliation of the papal territories, and to the savage persecution of the pontiff of Rome, torn from his see and overwhelmed with outrages and insults;—now undergoing in solitary imprisonment, all the indignities and sufferings which vindictive rage and disappointed tyranny can devise,—or perhaps already the victim of assassination.—All this too from no other cause—than that, after a long series of humiliating complaints and severe sacrifices, he was not found sufficiently servile and corrupt, to acquiesce in the profligate destruction of his temporal power;—to prostitute the influence of his station by exerting it in favour of the designs then meditated against Spain;—and to degrade and as it were desecrate religion, by contributing to render her a mere engine, for the promotion of the ambitious views of the worst of the enemies of christianity.

Sweden presents another instance, which should not be overlooked, in the selection we are now making. The intrigues of Bonaparte effected with the kingdom of Gustavus what his arms were, and from its geographical position would have continued to be, incapable of accomplishing. His emissaries and stipendiaries succeeded in producing that domestic revolution, which ended in the expulsion of her lawful monarch, and her subjection to the views of her enemy. The election of one of his own generals and creatures, as heir to her throne, after the sudden and mysterious death of the crown prince,—an election confessedly obtained through bribery and intimidation, virtually put an end to her independence, as it has for ever

Another reason assigned was, "that Tuscany produced ships and sailors." The commerce of the Mediterranean, whatever might be the tyrants of the sea, was necessarily to be subject to France, and, therefore, the whole coast of that sea must form a part of the French territory.

In the official declaration on the subject, it was also said,—"It has been the policy of European states to subdue the most distant countries, in order to obtain new commercial and maritime resources; why then were resources and acquisitions to be neglected which lay at hand?"

Bonaparte sent forth a decree of Ancona, to incorporate the papal territories with the kingdom of Italy, "considering" he said, "that the present sovereign of Rome had constantly refused to declare war against the English, and to cooperate with the kingdom of Italy and Naples for the protection of the Italian peninsula; that the interest of the two kingdoms and their relative situations, required that their communications should not be interrupted by any hostile power; and that the gift of the lands which compose the ecclesiastical states was made by Charlemagne (whom the Corsican called his illustrious predecessor,) for the benefit of Christendom, but not for the succour of the enemies of our holy religion."

tarnished her glory. The brief history of this transaction is sufficient to confirm our statement and to set the fraudulent character of Bonaparte in its proper light.

In the beginning of August, the king of Sweden held a secret committee, at which a list was presented containing the names of the king of Denmark, the prince of Augustenberg, the prince of Oldenburg, and of Bernadotte, (the prince of Ponte Corvo,) who were proposed as successors to the throne of Gustavus. To the king of Denmark it was objected, that, being a sovereign and independent prince, he could not, at the same time, hold the inferior office and rank of crown prince; and that to offer him the throne would be rather an insult than a compliment. A letter was then read to the committee from Bonaparte, in which, after condoling with Sweden on the sudden and unexpected death of her crown prince, and expressing the greatest attachment to the interests of that nation, in furthering and securing which, all his means should cheerfully be employed, he expressed his hope, that in choosing a successor to the reigning sovereign, they would select a person who possessed similar sentiments and the same strength of mind; that thus Sweden might regain that rank and importance among the nations of Europe, which she had formerly enjoyed. The letter concluded with the express declaration, that however anxious he was for the welfare of Sweden, he should by no means interfere with the election; as he was fully convinced that the enlightened members of the diet were best able to judge on this important occasion, who was most proper to be their future sovereign. Immediately after this letter was read, one of the members of the committee proposed the prince of Ponte Corvo: the king and four noblemen voted for him; and thus, as far as depended on the committee, his election was secured by a majority of votes. Before, however the choice was complete and legal, it was necessary, according to the Swedish constitution, that the subject should be discussed before each state of the diet; the nobles, the clergy, and the burghers.

On the 18th of August the king proposed the prince of Ponte Corvo to the diet as a proper person to be elected crown prince of Sweden.

In the outline which we shall now proceed to trace, of the conduct of the French emperor, towards the government of Portugal, until the period of the emigration of the family of Braganza, our readers will find something, that not only illustrates fully his dispositions on the subject of neutral rights,

but which has a very striking and close connexion with their own case.—With respect to the general policy of the court of Portugal and of the proceedings of Bonaparte, we shall adopt the language of the manifesto on this head, issued in 1808 at Rio Janeiro, by the Prince regent. The facts alleged in it are of such notoriety, as to render unquestionable the authenticity of the statement, and to obviate the doubts, to which the character of the source from which it is taken, might give birth. If there be any thing exceptionable in the manifesto, it lies in this, that the authors have not represented the whole extent of the devotion of Portugal, to the views and interests of France, nor disclosed one half of the humiliations and sacrifices to which she submitted, in order to preserve even a nominal independence.

"The court of Portugal," says this state paper, "though it saw with regret the French revolution begin, and deplored the fate of the virtuous king with whom it was connected by the closest ties of blood, yet did not take any part in the war which the conduct of the madmen who then reigned (by the confession even of the present government) forced all governments to declare against them: even when it sent succors to Spain for the defence of the Pyrenees, it always endeavored to preserve the most perfect neutrality.

"In the year 1793, the French government sent an envoy to the court of Portugal, who was received with the utmost respect, but who was not acknowledged: for then neither the principles of the law of nations nor of public law, authorized governments to acknowledge extraordinary changes unless they were known to be legitimate; and no nation is, in that respect, to judge for another, whilst its independence exists. The French government, without any declaration of war, or any formality, began to detain the Portuguese merchant vessels, and, after the peace of 1801, demanded and obtained indemnities for those which the court of Portugal detained to procure a legitimate compensation,—without paying any regard to the claims and remonstrances of the Portuguese merchants.

"The treaties of peace of Badajoz and Madrid, in 1801, are likewise a new proof of bad faith in the enemies of the court of Portugal: since the treaty of Badajoz having been signed there by Lucien Bonaparte, the French plenipotentiary, and the Prince of peace, on the one side, and by the Portuguese plenipotentiary on the other, the French government refused to ratify it, and forced Portugal to sign a new treaty at Madrid with much harder conditions, without being able to assign any other motives than its caprice and ambition.

"No sooner was the treaty of 1801 concluded, than the court of Portugal hastened to fulfil all its burdensome conditions, and to show, by the religious and punctual observation of all its engagements, how much it desired to confirm the good understanding which was reestablished between the two governments, and which ought to have caused to be forgotten all the injuries it had suffered certainly, and never provoked.

"After a short interval, war broke out anew between England and France: and the court of Portugal having made the greatest sacrifices to avoid war, and the harsh and humiliating propositions of the French government, thought itself fortunate to be able to conclude, *with the greatest sacrifices of money*, the treaty of 1804, in which France promised in the sixth article, as follows:—

"*The first consul of the French Republic consents to acknowledge the neutrality of Portugal during the present war, and not to oppose any measures that may be taken with respect to the belligerent nations agreeably to the principles and general laws of neutrality.*

"The French government from that time received all the advantages of such a treaty: it never had occasion to make the smallest complaint against the Portuguese government; yet was it, during the same war, and after such a stipulation, that it required of the court of Portugal, not only the infraction of her neutrality, but a declaration of war, in violation of all the treaties that had existed between the two countries, and in which, in the case of war acknowledged possible, it was determined how the subjects of the two nations should be treated; and all this without Portugal having any cause of complaint against the British government, which had even given it every kind of satisfaction, when the commanders of its ships of war had failed in that respect which was due to a neutral flag.

"The emperor of the French, in the mean time, caused one of his squadrons, on board of which was his brother, to put to sea. It anchored in the bay of All-Saints, where it was received with every kind of respect, and was supplied with all sort of refreshment. *Yet what is worthy of attention is, that at the very time the French government received, on the part of that of Portugal, so many marks of friendship and consideration, the squadron burned some Portuguese vessels, to conceal its route, with a promise of indemnity to the owners; which promise was never performed.*

"France received from Portugal from 1804 to 1807 all the colonial commodities and raw materials for her manufactures. The alliance of England and Portugal was useful to France;

and in the depression suffered by the arts and by industry in France, in consequence of a perpetual war by land, and a disastrous war by sea, in which she only met with defeats, it was certainly a great advantage to her, that the commerce of Portugal should suffer no interruption; undoubtedly it was equally useful to both countries.

"The court of Portugal might then justly, and with every kind of foundation, flatter itself that that of the Thuilleries would respect a neutrality, which it had acknowledged by a solemn treaty, and from which it derived such decided advantages, when Portugal was awakened from her security, in the month of August 1806, by a formal declaration of the minister of state for foreign relations, M. Talleyrand, to lord Yarmouth, by which the former notified to the latter, that if England did not make a maritime peace, the French government would declare war against Portugal, and order her territory to be occupied by 30,000 men.

"The court of England was alarmed by the above declaration, and proposed and offered to that of Portugal all kind of succor; but France which at that period had arranged every thing to crush the Prussian court, found means to satisfy the court of Portugal, which she then chose to spare.

"The war which was afterwards continued with Russia, still retarded the execution of the views of the emperor of the French with regard to the court of Portugal; and it was only after concluding the peace of Tilsit that the court of the Thuilleries, in a dictatorial tone, such as might have become Charlemagne, addressing the princes whose sovereign lord he was, caused the following strange demands to be made to the court of Portugal, through the medium of the French charge d'affaires, and by the Spanish ambassadors:—1st, To shut up the ports of Portugal against England; 2d, to arrest all Englishmen who resided in Portugal; and 3d, to confiscate all English property: or, in case of refusal, to submit to an immediate war, with France and Spain, because the French charge d'affaires and the ambassador of Spain, had orders to depart on the 1st September, about three weeks after the said proposal was made, in case the court of Portugal should not comply with all the pretensions of the two courts. The good faith of the French government is no less remarkable with regard to the celerity with which, after having made that declaration, *and without waiting for the answer of the court of Portugal*, it ordered all Portuguese merchant ships to be detained, which were in the ports of France, and by that measure actually began hostilities, without any previous declaration of war, and

thus carried to a far greater length all the excesses which formed its continued topic of reproach against England.

"The court of Portugal then began to adopt measures for securing its retreat to that part of the Portuguese dominions which is not exposed to any invasion. For this purpose it ordered all such ships of war as were fit to keep the sea to be fitted out, and also directed all the English to leave its dominions and sell their property; in the intention of shutting its ports against England, in order thus to avoid an effusion of the blood of its subjects, which would probably have proved useless, and to endeavor to comply with the views of the emperor of the French, in case he should not allow himself to be propitiated by the justice with which the court of Portugal asserted the rights of its independence, along with those which resulted from the treaty of neutrality concluded in 1804. The court of the Thuilleries, unwilling to agree to any conciliatory measures, and having demanded, not only the shutting up of the ports, but also the imprisonment of all British subjects, the confiscation of their property, and the dereliction of the project to retreat to America, his royal highness the prince regent of Portugal, adopted the resolution to shut up its ports against England, and even to comply with the rest of the demands and pretensions of France. His royal highness then ordered the whole of his army to move to the coasts and sea-ports; supposing that as France had essentially obtained all she demanded, she had nothing more to ask.

"The French government there observed a line of conduct towards his royal highness and his dominions, which would be unprecedented in history, were not the invasion of Switzerland by France, in the time of the executive directory, of a similar description. General Junot, without any previous declaration, without the consent of the Prince regent of Portugal, entered the kingdom with the vanguard of his army, assuring the people of the country through which he marched, that he was going to succour his royal highness against an invasion of the English, and that he entered Portugal as the general of a friendly and allied power. He received on his journey, convincing proofs of the good faith of the Portuguese government; for he witnessed the perfect serenity which prevailed with regard to France, and that all the Portuguese troops were near the coast.

"His royal majesty the Prince regent then adopted the only measure which could suit his situation, according to the principle which he had constantly followed, to save the blood of his people, and in order to prevent the criminal plan of the French

government from being carried into execution, which had nothing less in view than to secure his royal person and the whole royal family, in order to divide, at its own will and pleasure, the spoils of the crown of Portugal and the Portuguese dominions."

Such then is the abridged history of the relations of France with Portugal. The manifesto has, however, omitted to state the immediate cause of the determination, finally and precipitately adopted by the Portuguese court, to emigrate to the Brasils. At the moment when the Prince regent, in order to propitiate his oppressor, and to avert the fury of the French arms, proceeded so far in violation of every principle of good faith, as to order the arrest and detention of British subjects as well as of British property,—when in fact he was about to place all the resources of the Portuguese crown at the disposal of France,—the Moniteur, to his utter astonishment and dismay announced to Europe, that "the house of Braganza had ceased to reign." There was then no alternative left between deposition and captivity on the one hand, or exile with freedom on the other. Another important circumstance not mentioned in the manifesto, is the secret treaty, for the partition of Portugal, signed at Fontainbleau between the courts of Spain and France, notwithstanding the convention made with Portugal by Bonaparte in 1804, solemnly guaranteeing her neutrality.*

* This treaty was first published by Cevallos, and its authenticity has never been called into question. It exhibits an example of imbecility on the part of the Spanish monarch, and of perfidy on that of Bonaparte, which is not to be paralleled but in the history of the two individuals. The plan for the dismemberment of Poland excited much indignation throughout the world, and undoubtedly merits in all respects the perpetual execration of mankind. But if the circumstances under which the treaty for the partition of Portugal was formed, are considered, it will be found, in point of atrocity, at least to equal, if not surpass the other.—We subjoin a summary of the terms of the treaty, and of those of the secret convention which was concluded at the same time, with respect to the means for carrying the treaty into effect.—The record of this transaction cannot be too often multiplied. It should also be noted, that the preparations and plan for the invasion and subjugation of Portugal, on account of her *obstinate neutrality*, were made at the period when the Moniteur vomited forth long daily philippics, and denounced the vengeance of heaven against Great Britain for the Danish expedition, as an attack on *neutral rights* which nothing could justify or extenuate!

According to this extraordinary treaty, the king of Etruria ceding his Italian possessions in full and entire sovereignty to Bonaparte, was to have the province of Entre Minho e Douro, with the city of Porto for its capital, erected into a kingdom for him, under the title of Northern Lusitania. Alentejo and Algarve were in like manner to be given to Godoy, in entire property and sovereignty, with the title of the prince of the Algarves; the other Portuguese provinces were to be held in sequestration until a general peace, at which time, if they were restored to the house of Braganza, in exchange for Gibraltar, Trinidad, and other colonies which the English

To complete this picture of the dispositions of Bonaparte *in favour of neutral rights*, as exemplified in the case of Portugal, it would seem sufficient merely to notice, the subsequent occupation of that unhappy country by general Junot, and the horrible excesses committed by the French armies. But we have something to add, which calls still more particularly for the attention of the American public, and which is fraught with lessons that come still more directly and alarmingly home to their own concerns. They will not forget that the fixed policy of Portugal from the commencement of the war, was,—like our own—one of neutrality; that in the prosecution of this plan, she acted in relation to France, much in the manner we have done,—but with a better apology for her weakness; submitting to indignities and robberies without number; acquiescing tamely in the violation of solemn treaties, and in the grossest outrages on national decorum; making every possible concession and sacrifice short of those, which however, were finally wrested from her;—*an open declaration of war against England, a total renunciation of her own trade, and an unqualified adoption of the continental system.*

It is indeed true, that although she often violated her neutrality in favour of France, through the influence of terrors but too well founded, and which Great Britain knew how to estimate,

had conquered, the new sovereign was, like the king of Nothern Lusitania and the prince of the Algarves, to hold his dominions by investiture from the king of Spain, to acknowledge him as protector and never to make peace or war without his consent. The two contracting powers were to agree upon an equal partition of the colonial possessions of Portugal, and Bonaparte engaged to recommend his catholic majesty as emperor of the two Americas, when every thing should be ready for his assuming that title, which might be either at a general peace, or at farthest, within three years therefrom; and he guaranteed to him the posession of his dominions on the continent of Europe south of the Pyrenees.

The terms of the convention for carrying the above treaty into effect were as follows.

Twenty five thousand French infantry, and three thousand cavalry were to enter Spain, and march directly for Lisbon; they were to be joined by eight thousand Spanish infantry and three thousand cavalry, with thirty pieces of artillery. At the same time, ten thousand Spanish troops were to take possession of the province between the Douro and Minho, and the city of Porto, and six thousand were to enter Alentejo and Algarve. The French troops were to be maintained by Spain upon their march. As soon as they had entered the country, (for no opposition was expected) the government of each portion of the divided territory was to be vested in the generals commanding, and the contributions imposed thereon, to accrue to their respective courts. The central body was to be under the orders of the French commander in chief. Nevertheless if either the king of Spain or the prince de la Paz, should think fit to join the Spanish troops attached to that army, the French, with the general commanding them, should be subject to their orders. Another body of forty thousand French troops was to be assembled at Bayonne, by the twentieth of November at the latest, to be ready to proceed to Portugal, in case the English should send reinforcements there, or menace it with an attack.

she still laboured to avert the catastrophe of a war with that power, being desirous of preserving a remnant of commerce, and of keeping open for herself the chance of British protection, against the extremities to which her implacable and insatiable tyrant might proceed, notwithstanding an ulterior compliance with all his first demands. It is perhaps also true, that actuated by the motives of interest and of dread which we have stated, she prevaricated somewhat with the French emperor, when she promised to comply with all his requisitions;—that she did not explain herself "without shuffling,"—that she still manifested reluctance and irresolution, or probably still sought to maintain an equivocal peace with Great Britain. All this, however, must be allowed to have been fully justifiable under the law of nations as regarded France, and quite pardonable in the eye of mercy and generosity.

We have seen what a fell, ruthless vengeance was executed upon her, professedly on account of her original delinquency with regard to the *continental system*, and notwithstanding her final and unreserved adoption of it: a system to which we are now, in the same manner, and nearly in the same language, alike summoned, enticed and commanded to accede, and which we have hitherto evaded in its full extent, and shuffled by, in almost the same way, but not perhaps with the same good faith toward Great Britain, as Portugal did before us.—We have seen the *result* in her case, and have there a sufficient warning,—but it is still curious and important for us to know precisely, the judgment which Bonaparte formed of her conduct, and to review his own account of the heinous offences which "*compelled*" him to pursue the course we have described. The *Moniteur* has furnished us with what we want, in the several official reports made to the Emperor, in relation to the affairs of Portugal, and published in that journal in January 1808. We shall proceed to extract the most remarkable passages, leaving our readers to make the proper application, and to conjecture what judgment will be pronounced by Bonaparte upon us, and what will be our reward too when—we have carried the *continental system* into full operation here.*

"There is no sovereign in Europe who does not acknowledge that if his territory, his jurisdiction should be violated, to the

* "The Americans," says in April last, the *Mercure de France*, a Parisian journal of high authority, after speaking of the measures adopted against England, by the *European* allies of France—"The Americans, *on their part*, are "establishing in the new world, *another continental system*, which draws still "closer the blockade to which England has subjected herself by menacing "France," &c. All the French gazettes hold a similar language, and take it for granted, that we have become members of the *Imperial league*.—Their opinions are not to be despised, when attention is had to the source from which they are derived.

detriment of your majesty, he would be responsible for it. If a French ship were seized in the port of Trieste or Lisbon, the government of Portugal and the sovereign to whom Trieste belongs, would have to consider that violence and damage done to your majesty's subjects as a personal outrage: they could not hesitate to compel England, by force, to respect their territories and their ports: if they adopted a contrary conduct, if they became accomplices of the wrong done by England to your subjects, they would place themselves in a state of war with your majesty. When the Portuguese government suffered its ships to be visited by English ships, its independence was as much violated by its own consent, by the outrage done to its flag, as it would have been if England violated its territory and its ports. The enemy ought to be placed in a state of interdict, in the midst of the seas, of which he pretends to reserve to himself the empire. In this position all the powers could, and ought to expect from each other a mutual support."

"The court of Lisbon should have explained itself *without shuffling*. Your majesty proposed to it to accede to the system of the continent, and had it done so, you would have forgotten every thing."

"Portugal promised to join the cause of the continent, even to make war against England: but she wished to make it, if I may use the expression, in concert with her; to furnish her, under the appearance of hostility, with the means of continuing her trade with Portugal, and through Portugal with the rest of Europe; a kind of war equivalent to insidious neutrality."

"Portugal decided her own fate; she broke off her last connexions with the continent, by reducing the French and Spanish legations to the necessity of quitting Lisbon. Portugal has placed herself in a state of war with France, notwithstanding *the benevolent disposition of your majesty towards her. War with Portugal is a painful but necessary duty. The interest of the continent, from whence the English ought to be excluded, forces your majesty to declare it.*"

If the instances of Portugal and Spain put it beyond the possibility of a doubt, that there is no consideration of honour or of faith, no perspective of carnage and devastation, no waste of treasure or of blood which can arrest the emperor of France, in the impetuous career of his ambition, the case of Holland, of which we are about to remind our readers, seems to us still more directly calculated than either, to illustrate the consummate depravity of his heart, and his supreme contempt for national rights and public opinion. The official do-

cuments now before the world, published by the French government itself, confine us to one strain of sentiment and language, with respect to the private character of the individual, and can admit of but one interpretation as to his political morality and views.—In order to justify all the opinions we have ever expressed on these points, it would scarcely be necessary for us to resort to any other proof, than that which is afforded by the papers, relative to the incorporation of Holland with France, contained in the Appendix to our second Number.

There can be but few of our readers unacquainted with the history of Holland from the commencement of the French revolution;—with her internal struggles and dissensions; her subjugation by the armies of the Directory; her sacrifices and subserviency to her oppressors; and the final annihilation of her power and resources. It was after the elevation of Bonaparte to the sovereign authority in France, that the last serious attempt was made by her patriots—of whom there were many of no ordinary worth,—to establish a free and regular government among themselves, and to secure their national independence. They thought, as did the same class of men in Switzerland, the period of the organization of a system in France, which seemed to promise a respite to the continent, and a semblance at least of respect, for the rights of independence in her neighbours, favourable to the accomplishment of their wishes. But they found in Bonaparte, an enemy more formidable from his resources, and more determined and implacable from character and policy, than they had encountered in any of his predecessors.

In their aggressions on their neighbours, the revolutionary governments of France were impelled by the mere lust of conquest and plunder, but the new ruler was actuated not merely by this impulse, but by other principles of action, and other passions, yet more inveterately and dangerously hostile. The views of one who aimed at the establishment of a military despotism in his own person, and of the dominion of his sword over the world, and whose natural appetites propelled him furiously to the pursuit of these objects, could not be fully gratified, while the spirit of freedom or of national independence, or that of trade which nourishes both, were suffered to thrive in any part of the continent, and particularly in the immediate vicinity of France. Switzerland and Holland were therefore to be completely, and without delay, dismantled as it were, and the enterprises and principles of freedom to be instantly crushed, and for ever paralyzed in both countries. The former, however, was the least unsafe and the least invidious, from the prevalence there of but one obnoxious principle—the love of liberty—and that in a degree easily manageable, as we have

seen by the result. It was not therefore necessary to carry into effect at so early a period, *all* the measures concerted in her regard.

Holland, however, was otherwise constituted, and to be differently treated. The Dutch were not only of an unbending disposition, and deeply imbued with the principles of freedom, but essentially a trading people.—Commerce had become a second nature to them; and was indispensable to their individual comfort, and to their very existence, as a nation. Their habits, predilections, and necessities, created in some degree, and powerfully seconded by their geographical position, opposed serious obstacles to the accomplishment of every leading wish and plan of the French emperor. No time was therefore to be lost, in placing them under his own particular and absolute control. All the fangs of French despotism were, in consequence, fastened upon their unhappy country at once. French functionaries were made to occupy every public office in Holland, exercised a most rigorous system of coercion, and practised almost every expedient, that oppression and rapine can devise, not only for the purpose of satiating their own appetites, but of beggaring and dastardizing their victims.

Her immediate incorporation with the Empire was not however, deemed necessary or politic. It seemed enough for the object to place over her a government likely to be a mere automaton in his hands, and at the same time of such a nature, as to counteract the republican propensities of the people, and to habituate them to the forms, as well as to the substance of slavery. An absolute monarchy was therefore organized for the Dutch, and Louis selected as the mimic sovereign;—a man of weak nerves and unambitious temper, who, it was supposed, if not prompted by inclination to cooperate in the general plan, might be awed into compliance; or, if not found a suitable agent, stripped of his crown without difficulty or embarrassment. Precautions were at the same time taken, to leave as little as possible, of the business of internal administration, to his option or management, by introducing into his kingdom a host of French customhouse and police officers, by stationing there a large French army, by withdrawing the national forces from under the authority of his government, and by subjecting every place, with the exception of the capital, to the orders of a French officer.*

Louis deceived the calculations of his stern taskmaster, or rather justified the apprehensions, which the latter is said to have expressed in the outset, with regard to his subserviency.

* Vide, Address of Louis to the Dutch legislative body.

He was unable to withstand the hideous aspect and the pathetic voice, of the universal misery produced around him, by the continental system, and not insensible to the personal degradation which he suffered, under all the circumstances of his position. The grim anti-commercial decrees were allowed to languish, and the peremptory orders of the emperor with respect to their rigorous enforcement, either openly disobeyed, or industriously eluded. It was however, at length signified to the Dutch monarch—either on this account, or because the term originally prescribed for the duration of his *agency*, had expired—that Holland was to be annexed to France,* and that the French head-quarters were to be established in Amsterdam.

The conduct of Louis at this juncture, was not quite such, as his inexorable tyrant had dictated. He abdicated his throne, indeed, but in favour of his son, and accompanied the act with a public recital of the circumstances which had led to it, and a declaration of the motives by which he was guided. His testimony as to the facts must be deemed unquestionable, particularly when we consider the personal risk which he incurred through the whole proceeding. It places the character of Napoleon in the fullest relief, and consigns it to perpetual execration. The address of Louis cannot be read without exciting abhorrence of the perfidy and ferocity of the imperial juggler; nor is it possible to refrain from indulging sentiments of compassion, and indeed of *comparative* respect, for his wretched puppet. If the flight of Lucien be not sufficient to convince the world, that Napoleon possesses none of the common sympathies of our nature;—that he is a stranger even to the sacred instincts of consanguinity;—that he scorns all restraints either of morality or decorum, and acknowledges no ties but those of mutual interest and congenial guilt,—his deportment towards the miserable Louis;—the hateful and ignominious part which he selected for him to act, as an executioner and a dupe;—the bitter mockery and the wanton treachery with which he attempted to practise upon his hopes and fears,—the contemptible light in which he exhibited him to the world,—and the total and mortifying obscurity to which he has consigned him,—all these, at least, form a mass of proof, which no sound understanding or honest heart, can resist. Let the reader test our opinion by

* "I am assured," says Louis, in a communication to his ministers, contained among the papers connected with Labouchere's mission, "that France "is firmly decided to annex Holland notwithstanding all considerations. I "must confess that I have not succeeded in conciliating in the mind of my "brother the existence and independence of the kingdom, with the success "of the continental system." February, 1810.

the following passages, which we extract from the address of Louis to the legislative body of Holland.

"On the 16th of June, I received through the *chargé d'affaires* of his majesty the emperor and king, an assurance, that it was not his intention to occupy Amsterdam; this led me to hope, that he would abide strictly by a treaty, the *conditions of which were drawn up by his majesty the emperor himself.* Unfortunately my error was not of long duration, as I received a communication that 20,000 French troops had united in the environs of Utrecht. I continued, notwithstanding the extreme scarcity and embarrassments of our finances, to furnish them with subsistence and other necessary things, although the treaty precisely expressed that there should be 6000 men only maintained at the expense of the kingdom; but I feared that this collecting of troops was done with other views unfavourable to our government; and late in the night on the 23d, I received official information that his majesty the emperor insisted upon the occupation of Amsterdam, and the establishment of the French head-quarters in that capital: I signed a treaty dictated by France, under the conviction, that measures the most disagreeable for the nation and for myself would not be followed up; and that satisfied with my *voluntary* abdication, which is the consequence of the said treaty, every thing would go on smoothly between France and Holland. The treaty presents, indeed, a great number of pretences and of new grievances and accusations; *but can pretences be ever wanting?*"

"I have always flattered myself that the treaty would be fulfilled; I have been mistaken; and, if the entire devotion which I have manifested for my duty on the 1st of April, has only tended to drag on and prolong the existence of the country for three months, I have the cruelly grievous satisfaction, yet the only one which now I can have, that I have fulfilled my obligations to the end:—that I have, (if I am permitted so to speak,) sacrificed to the existence and welfare of the country, all that was possible, but after the submission and the resignation of the 1st of April 1810, I should be much to blame if I consented to retain the title of king, being no longer but an instrument, no longer commanding, not only in the country, but even in my own capital; and perhaps soon not even in my palace."

"I have for a long time foreseen the extremity to which I am now reduced, but I could not have prevented it without sacrificing my most sacred duties, without ceasing to have at

heart the interests of my people, and without ceasing to connect my fate with that of the country."

"Perhaps I am the only obstacle to the reconciliation of this country with France; and should that be so, I might find some kind of consolation in dragging out the remainder of a wandering and languishing life, at a distance from the first objects of my whole affection, this good people, and my son. *These are my principal motives; there are others equally powerful, with respect to which I must be silent, but they will be easily divined.*"

"*I had never proposed to myself to govern a nation so interesting yet so difficult as yours.*"

The conduct of Bonaparte on the abdication of Louis, was such as the foregoing history might lead us to expect. It was immediately announced from Paris, that the act, having been done without a previous concert with his Imperial majesty, *could* have no validity;—that after the peace of Vienna it had been in his majesty's contemplation to annex Holland to France;—that he had consented with reluctance to the creation of the Dutch throne;—that the obstacle to the union was now removed;—that his majesty owed it to his empire to take advantage of a circumstance which so naturally led to it; and in fine that his majesty, having taken into consideration *the state of affairs in Europe, the geographical position of Holland, and the pretensions of the* COMMON ENEMY,* had, by a decree issued at *Rambouillet*, annexed the kingdom of Holland to his crown. When we compare this language with the real and notorious circumstances of the case, with the established fact, that the phantom of royalty was forced upon Louis, in the same manner as the bloody sceptre of Spain was thrust into the trembling grasp of Joseph, to be plucked from him when he ceases to be useful as the passive instrument of crime—and as it was

* The insulting term employed by Turreau, in his letter to Mr. Smith, of December 12th, 1810. "Some modifications," says the French minister, "will be given to the absolute exclusion of tobacco and cotton from France. "These modifications will not depend upon the chance of events, but will be "the result *of other measures firm and pursued with perseverance, which the "two governments will continue to adopt* to withdraw from the vexations and "monopoly of the COMMON ENEMY, a commerce loyal and necessary to "France as well as to the United States." We know not whether the *coalition* here alleged, was ever disclaimed, or the application of the phrase *common enemy*, ever resented, by our administration. The letter amounts to a kind of dictation which no independent government should ever tolerate from another. It is in substance a repetition of the declaration made by Champagny to General Armstrong. "War in fact exists between the United "States and England," a declaration to which the Executive took exception at the time.

attempted compulsorily to invest the temples of Lucien with a diadem, to be borne under the prescribed condition, of a sacrifice of the tenderest ties and the most sacred duties,—when we make this comparison, we are utterly at a loss which to admire most, the consummate duplicity of the tyrant, or the hardihood of his effrontery.

The most remarkable document connected with this transaction, and which most forcibly evidences the political *morality* of Bonaparte, and the *moderation* of his views, is the report made to him on the subject, by his minister of foreign affairs, wherein are detailed the considerations by which his majesty was prompted to terminate the national existence of Holland. We shall request the attention of our readers to the following extracts from the report, before we proceed to indulge in any comments.

"The union of Belgium with France has destroyed the independence of Holland. Her system has necessarily become the same with that of France. She is obliged to take part in all the maritime wars of France, as if she were one of her provinces. Since the creation of the arsenal of the Scheldt, and the annexation to France of the provinces composing the mouths of the Rhine and the mouths of the Scheldt, the commercial existence of Holland has become precarious.

"The part of Holland which is still alien to the empire, is deprived of the advantages enjoyed by the part united thereto. Compelled, nevertheless, to make common cause with France, Holland will have to support the charges of this allowance, without reaping any of its benefits.

"Holland is sunk under the weight of her public debt, which amounts to between 85 and 90 millions; that is to say, a fourth more than the debt of the whole empire; and if a reduction had been projected by the government of the country, it would not have been in its power to give a guarantee for the inviolability and permanence of such a measure, inasmuch as the debt, even if reduced to thirty millions, would still be beyond the actual means and ability of that country.

"The period of the power and prosperity of Holland was, when it formed part of the greatest monarchy then in Europe. Her incorporation with the great empire, is the only stable condition in which Holland can henceforth repose from her sufferings and long vicissitudes, and recover her ancient prosperity. She ought to be associated in our blessings, as she has been associated in our calamities. But another interest *still more imperiously* indicates to your majesty the conduct which you ought to adopt.

"*Holland is, in fact, a shoot from the French territory; it*

constitutes a portion of soil necessary to complete the form of the empire. To become full master of the Rhine your majesty should advance to the Zuyder sea. By this means all the rivers which have their source in France, or which washed the frontiers, will belong to you as far as the sea. To leave the mouths of your rivers in the possession of strangers, would, in fact, sire, confine your power to an ill limited monarchy instead of erecting an imperial throne.

"*The annexation of Holland is still necessary to complete the system of the empire, particularly since the British orders in council, of November* 1807.

"*But the great designs of your majesty, cannot be fully accomplished, except by the union of Holland. It is necessary to complete so astonishing a creation.*

"*Finally, the union of Holland augments the empire, in rendering more close the frontiers she defends, &c. adding to the security of its arsenals and docks.* It enriches it by an industrious, thrifty and laborious people, who will add to the stock of public wealth, by increasing their private fortunes. There is no people more estimable or better adapted to derive benefit from the advantages which the liberal policy of your government affords to industry. France could not have made a more valuable acquisition.

"The annexation of Holland to France, is the necessary consequence of the union of Belgium. It completes your majesty's empire, as well as the execution of your *system of war, politics, and trade.*"

That mind is degenerate or sluggish indeed, which does not sympathize in the emotions of keen indignation, which must have agitated the patriotic citizens of Holland, when they read such a justification as the foregoing, for the fatal violence committed on their national independence. They must have felt, that they were not only outraged by the most impudent of falsehoods and the most flimsy of sophisms, but that they were the objects of something that bordered on irony, when they were told, that the very calamities into which France herself had plunged their country, that the commercial losses and disadvantages, the financial embarrassments, the national weakness, and the individual poverty which they owed to the rapacious and malignant policy of the French emperor,—that the very direction which he himself had compulsively given to their public counsels, invested him with the right to go further; to expunge Holland from the catalogue of states, and to multiply their miseries by condemning them to share in those, which are peculiar to the wretched

condition of a French subject. How must they have received, under all circumstances, the compliment paid to them, in the phrase which says, that "there are no people more estimable or better adapted to derive benefit from the *advantages* which *the liberal policy* of the imperial government affords to *industry*." How must they have relished the topic of consolation selected for them in the assertion so notoriously false,—"that the period of the power and prosperity of Holland, was, when it formed part of the greatest monarchy then in Europe!" It was cheering indeed to be thus reminded of the original vassalage of their country, and of the galling yoke imposed upon their ancestors by the Spanish monarchy; and to be led by association to recollect, the heroic efforts by which the former shook off that yoke, and established the independence, of which they were about to be bereft.*

In the motives drawn from the interests and views of the emperor, we have all an equal concern. The pretensions which they imply, are fitted not only to startle the nations of Germany, but to rouse every country yet nominally independent to immediate exertions for self-defence. If the law of force and expediency was never more iniquitously acted upon, than in the case of Holland, it never was at the same time, more unequivocally and impudently avowed. Hitherto "the great masters"

* It is somewhat curious to compare the feelings which must really have prevailed among the Dutch, with the language which was put into the mouth of their great dignitaries, when made to present an address to their new monarch.

"Sire," say the deputies—"Your very faithful subjects of Holland, the members of the council of state, the deputies of the legislative body, of the land and sea forces, and the deputies of the city of Amsterdam, have the honour of presenting themselves at the foot of your majesty's throne, respectively to declare the sentiments of admiration, confidence, and obedience with which they are animated.

"The Dutch people, sire, known in the annals of history by the exploits of their heroes, by the spotless character of their statesmen, and the exertions made by them to obtain and maintain their independence, are still possessed of a strong recollection of the virtues of their forefathers."

The following is an extract from the answer of Bonaparte.

"I put a period to the wavering destinies of Italy, by placing the iron crown on my head. I annihilated the government which ruled Piedmont. By my act of mediation I *justly appreciated the constitution of Switzerland, and brought the local circumstances of the country in unison with the safety and rights of this imperial crown.* I gave you a prince of my blood for your ruler; this was intended as a bond to unite the concerns of your republic with the rights of the empire. My hopes have been deceived; and on this occasion I have shown more forbearance than my character generally admits, and my rights require."

in tyranny, have endeavoured to skin and varnish over their excesses, by pretences derived from legitimate sources of right. They have never dared openly to proclaim self-interest as their leading rule of action, and the basis of all public policy. This, however, is done without disguise or reservation, in the Report of Champagny, as our readers will see at once, by adverting to the passages we have marked in italics. The French minister does not content himself with laying it down as a fundamental and general principle, that all the rivers which have their source in France, or which wash the frontiers, should belong to her as far as the sea, together with any country which might be so situated, as to be able to exert an unfavourable influence on the happiness of the subjects of his imperial majesty, as far as it may consist in the free vent of their manufactures and the prosperity of their commerce.—He goes further. He resolves the whole political duty of his Emperor into the mere principle of self-aggrandizement. He rejects and disclaims, all limits to the right of exerting the force of the empire, but those which are prescribed by the interests and *great designs* of the monarch. Any thing is lawful, and will be attempted if expedient, which may contribute to complete his "astonishing creation" of power, or to facilitate his "system of war, politics and trade." Should his majesty's intended *creation*, or his great designs, embrace the consolidation of all Europe under his own rule, or the subjugation of America, it follows as a necessary consequence from the doctrine of Champagny, that he may justifiably labour for this end, and will recognise no *moral* obstacle whatever.

The American public will do well to reflect upon this code of national law, and to examine how far it promises security to their neutral rights. It has already been applied to them as well as to Holland, in the confiscation of their property under the Rambouillet decree. The imperial doctrine of reprisals rests upon this solid foundation. The whole deportment, indeed, of Bonaparte towards us, has been but a practical commentary. There would not perhaps be so much danger in it, were the *grand designs* of the French emperor uniformly the result of enlightened, dispassionate views of self-interest, or of *longsighted* ambition. But unfortunately, the history of his career during the few years past proves incontrovertibly, that they may be dictated by narrow prejudices and headlong passions;—by a rancorous hatred to the British name and *race* wherever found; by a deadly animosity to commerce and republican institutions; by an uncontrollable impatience of even

the shadow of independence in any nation whatever. We, therefore, in our relations with the French government, can have no ground of reliance, but what is eminently precarious, —none in fact, but its caprice, or the extent of our concessions and the earnestness of our supplication.

But to proceed. The first act of the French emperor with respect to Holland, after converting her into a department of the empire, was strictly consonant to the nature of the whole transaction, and to the spirit of that equitable legislation, which it is the peculiar privilege and felicity of his own immediate subjects to enjoy. A tax of fifty per cent. was imposed and levied on all colonial produce, in the hands of the Dutch merchants. Thus were they plundered by an *ex post facto* law, and made to taste at once those blessings of their new condition, by which, as the Report ostentatiously announces, they were to be compensated for their antecedent calamities.

The sequel has been in full unison with this commencement. The anti-commercial decrees have been carried into execution at the point of the bayonet, and by the infliction of the severest punishments. All the sources of public and private wealth have been completely cut off, while the very dregs of both, have, by the most shameless exactions, been drained into the treasury of Paris, and the pockets of their military "administrators." Not satisfied with extinguishing their trade, the French emperor, pursuing the same "liberal policy" so "favourable to industry," has introduced among them the Conscription with all its numerous comforts and "advantages." In short, and to speak without any mixture of levity, Holland, as we are well informed, exhibits a picture of despondence and dejection,—of ruin and distress, than which nothing can be conceived more afflicting to a generous mind, or more disgraceful to human legislation. We ourselves saw that ill-fated country in 1807, and she was then in a state of wretchedness, that more than expiated all her revolutionary follies and crimes. Among her inhabitants but one energetic sentiment appeared to survive,—that of the most profound detestation of their oppressors, who in their turn repaid them for this feeling, by daily multiplying the worst excesses of despotism, and incessantly probing to the quick every sensibility both of their domestic and national character. Whoever has, of late, held much personal intercourse with the mercantile body in Holland, and observed narrowly the treatment to which they are subjected, must be convinced that Bonaparte hates and despises the whole class throughout the world.

We shall now pass to a topic of a more pressing interest—that of the repeal of the Berlin and Milan decrees,—or rather to the true question in the case,—whether the unjust edicts of France were on the second of November last, so revoked or modified as that they ceased—conformably to the president's proclamation,—to violate the neutral rights of the United States. The actual state of things with respect to these edicts, will also of course, fall under our consideration. It would seem that the highest importance is made to attach to the determination of this point, inasmuch as, if we are to credit authoritative intimations, it is to fix the long unsettled policy of our government, and to place us in hostile array against Great Britain, should she persist in her orders in council.

We ourselves would protest against the necessity or wisdom, of giving any such momentous influence to this topic, even though it were established, beyond the possibility of a doubt, that all the iniquitous edicts of France concerning our trade, were formally and substantially repealed at this time, and our commerce with the French empire placed, for the moment, on a truly lucrative footing. A war with England grounded upon any act or declaration whatever of the French emperor, would appear to us nothing short of madness in any event. It is impossible that we should think otherwise, nor can our readers, when they reflect upon their past experience of the dispositions of the French emperor,—upon his general designs, and habitual policy. Neither we nor they, when we call to mind the history of his past measures in relation to our trade and rights, or dwell upon the details given in the foregoing pages, can, consistently with any principle of good sense, consider a change in his conduct at this period, in any other light, than as springing from passions, in the gratification of which it would be criminal to co-operate, and as looking to ends which our dearest interests forbid us to promote. The complete development of this opinion will not, however, be of indispensable importance. The people of this country will not, we trust, although the effort has been made to imbue them with the notion, that a war with England is a necessary correlative to the repeal of the French edicts,—nor will the federal legislature, upon whom it may probably be attempted to impress the same idea,—suffer themselves to be betrayed into so pernicious an error.

The public mind, moreover, cannot, we think, long continue insensible to the evidence of facts, or hesitate to admit the truth of the following positions, which we hope to establish to the satisfaction of our readers; that the French edicts were not

repealed on the second of November last, conformably to the tenor of the law of March, or of the president's proclamation;—that they still impend over our heads, and consequently, that the United States are in no manner pledged to France, for the continuation of the non-intercourse against Great Britain. In discussing these points, we do not mean to repeat the arguments we have already urged in our first number, but only so far, as may be requisite for the enforcement of those, which the intermediate events, and more recent reflection have furnished.

It will be material in the first place, for the proper comprehension of the whole subject, to refer to the history and spirit of the law of congress, which empowered the president to revive the non-intercourse as to one belligerent, under certain specified circumstances. The non-intercourse, as our readers know, was substituted for the embargo,—a measure found in its operation upon ourselves, too oppressive to be endured. The non-intercourse, in all its shapes, was intended to answer the ends contemplated by the embargo. Those ostensibly were, and could *ostensibly* be, none other, than to snatch our commerce from foreign depredations, and to recal the belligerents through the severity of the privations to which it might subject them, to a proper sense of their interests. In one respect, indeed, the embargo and the non-intercourse differed as to their tendency; that the first was presented under the character of an expedient to avoid a war with both belligerents, to which we were said to be unequal, and that the latter rather looked to a war with one belligerent in a certain event, and indeed held out this prospect, as an inducement to the more speedy acceptance of our overture, by one or the other.

But the main drift of all our restrictive measures, was to replace our trade not merely upon a speculatively honourable, but also upon an extensively lucrative footing;—to retrieve the commercial advantages of which we were deprived, by the continuance of the retaliatory system of the belligerents. In all our appeals to them, whether legislative or diplomatic, on the subject of their decrees, we had in view, not the *rehabilitation* of an abstract right, but the recovery of a substantial benefit;—of a *profitable* prerogative. It would be absurd to say, that we aimed exclusively, or principally, at saving the point of honour. By the adoption of such means that was but too clearly sacrificed;—evidently waived; never to be again asserted with any admissible pretension, or colour of impartiality, until we should have totally discarded commerce as a *weapon*, and opened an entirely new and distinct score with both belligerents.

The act of May, contemplated therefore, such a revocation of the retaliatory edicts, as would not only reanimate our rights, but restore an *advantageous* freedom to our trade. From the very nature of the proceeding, the overture which it contained, must have been understood in this sense by both belligerents. Neither could have mistaken our object, nor supposed that the mere *promise* of a revocation of its decrees, accompanied, however, by the enactment of municipal laws, tantamount in effect,—would be a fair or satisfactory compliance with our requisition. Nor for another reason which we shall proceed to state, could either have been ignorant, that the act of congress implied such a repeal or modification, as would restore our commerce to its original freedom and *security*, as far as this object could be accomplished by the yielding belligerent.

Even upon the face of the act, it was obviously one of the principal ends of the framers, in case their proposition were accepted by either of the belligerents, to remove thus every pretext for the continuance of the decrees of the other, and to arm themselves with an irrefragable argument on a final application for their repeal. Now it must have been evident to congress and to every understanding, that this particular purpose could not be achieved, unless the previous revocation were wholly unequivocal, clogged with no uncertain delays, with no unlawful or impracticable conditions;—unless it were equivalent to a real change of system. They knew, that as something more than a mere *pretext* was required by both belligerents, for the revocation of their decrees, the one from whom they might demand that measure, on the ground of the example being set by the other, would naturally and justifiably, inquire into and be determined by, the sincerity, and sufficiency of the previous repeal; would closely investigate,—as we ourselves were bound to do before we proceeded to act upon it—the *quo animo* with which it was made, the scope of its operation, and its competency to the object.

Moreover, congress had, in their act of May, another palpable aim. This was, in case the abandonment by all parties, of the retaliatory system, could not be effected, to bring one of the belligerent nations at least, to such terms, as would leave us no reasonable ground of further complaint against her, and afford us some good colour of safety and *impartiality*, for renewing with her the relations of peace and friendship; so that we might at length have but one wrong-doer to petition, or but one antagonist to fight, should we ever prevail upon ourselves to resort to arms. It must be almost superfluous to add, that

to enable us to arrive at this desirable consummation, with a due regard to our honour and true interests, nothing could be sufficient, short of a total and honest relinquishment by one or the other belligerent of all regulations incompatible with our rights,—a prompt cessation from injury of every kind,—a *practical* demonstration of good will towards our commerce.

After the foregoing remarks it cannot be difficult to decide, in what case alone the president was authorized to issue his proclamation, pursuant to the true interpretation of the act of congress. The revocation specified, was to be such, as that the decrees of the belligerent making it, should have *actually* ceased to violate our neutral rights; such as that, after this cessation, an interval of three months should be allowed, before all the provisions of the law were carried into effect, in order to give time to our government to apply for the repeal of the counter-edicts, and to enable their authors to decide upon this application. Now it must be obvious, from the very nature of things, that a revocation depending upon a *doubtful* condition to be performed at a future day, could not fall under this description, nor justify the President in issuing his proclamation at the period of the date of that revocation; and in fact, that any *conditional* revocation, other than one of which the condition could be executed simultaneously with its enactment, was, under such circumstances, an absurdity in terms.

We hold it, moreover, to be little less than self-evident, that a revocation not to become absolute until our law of May was faithfully executed in all its provisions, both as to the issuing of the President's proclamation, and the revival of the non-intercourse,—could not have come within the meaning of congress. There would be in this proceeding, something like what the logicians call a vicious circle. The law of May could not have been thus executed without a previous revocation, and to suppose that revocation to depend reciprocally upon the execution of the law, involves a contradiction and absurdity.* If an act of revocation by one belligerent, of this nature, were not a nullity in itself, it would be still irreconcileable with the tenor of our law, inasmuch as it would exclude the idea of an

* Mr. Russel our present *chargé d'affaires*, in Paris, appears to have had some confused notion of this, when he says, in his sharp remonstrance to the duke of Cadore, concerning the seizure of the brig New Orleans Packet, "It is of no importance that the British Orders in Council have not been "withdrawn, if the United States, *in due time*, perform the condition, which "depends alone on them. *And what is this condition? Why to execute an act of "congress against the British, which to be thus executed requires the previous re-"vocation of these very decrees.*"

interval of three months, such as the law stipulates, for the purposes we have mentioned. It would be inadmissible also, because it would weaken, if not entirely destroy, the ground of the application to be made for the repeal of the decrees of the other power. It would inspire no confidence into the latter: if she consented to do any thing it could lead her to grant, and would intitle us to ask, nothing more than a conditional revocation of the same purport; and thus we would be placed in a singularly awkward and injurious predicament,—with the decrees of both belligerents suspended over our heads or in *partial operation against us*, for several months;—exposed at the expiration of that period, to the certain revival of those of one or the other, if we fulfilled the condition prescribed by either,—and brought back to the very point from which we set out, by being again reduced to the necessity of choosing between them as enemies.

There is still another and conclusive reason, why the idea of admitting a revocation, of the character of that described in the preceding paragraph, would have been both unhesitatingly and indignantly rejected by congress. It would be offensive to the dignity and honour of our rulers, as implying *a doubt* whether they possessed enough of energy or good faith to execute their formal laws,—to discharge their most solemn obligations. They could not of course, without crouching under a most contumelious insinuation, and submitting to a gross violation of the common courtesy due from independent powers to each other, sanction in any way, or take as the foundation of an important proceeding on their part, the act of a foreign government, of which the very terms announced distrust, in the inviolability of their engagements. But the position is indisputable, that a repeal resting on the express proviso, that our non-intercourse should be revived, conformably to the pledge so solemnly given in the law of May, would be an act of the kind here described. If the American Executive consented to issue his proclamation in virtue of a repeal so conditioned, he would place the United States on a footing of disgraceful inferiority, as his proclamation would evidently take for granted the good faith of the other party, while our own was insultingly called in question.

We shall now proceed to put a case about which, if the preceding remarks have any force in them, there can be but one opinion. Let us suppose that one of the belligerents—France for instance—had, on the 5th of August 1810, announced a revocation of her decrees qualified however, as follows;—that

the revocation was to date only from the 2d of November ensuing, and the decrees to be in full force in the interval;—that all our vessels *of every description*, whether liable or not to their operation, arriving in her ports after the said 2d of November, should be *sequestered*, and retained as hostages, until his imperial majesty could learn that we had carried our law completely into effect on the 2d of February;—making it thus necessary that the sequestration should endure for a space of four or five months,—at the expiration of which time only, American trade, limited however, to the traffic in our own produce, would be graciously exempted from the operation of the decrees. If such a revocation as this had been brought within the view of congress, when they were passing their law of May, would they have considered it in any other light, than as utterly irreconcilable with the letter and spirit of their act? Would they even have brooked the idea of the sequestration of our vessels, as pledges for their fidelity in the due execution of their engagements,—of a measure bearing upon the face of it a suspicion so discreditable to their honour, and threatening very serious loss to our merchants? If now,—on the other hand,—we imagine, that,—in defiance of every principle of reason, and to the disregard of all national dignity and personal pride,—they had then, or at any subsequent period, declared this revocation to be suitable and within the scope of their law, and that the President of the United States had issued his proclamation accordingly,—nevertheless, could any intelligent and candid mind, investigating dispassionately the circumstances of the case, consent to allow that the French decrees were actually, on the 2d of November, so revoked, as to satisfy all the provisions, or even the leading requisition of the law of May?

Our readers can have no difficulty in perceiving the application which we mean to make, of what has been hitherto said, nor will it be possible for them to resist the force of the conclusions we shall draw. Those who are acquainted with the facts of the history of the pretended revocation of the Berlin and Milan decrees, must see at once, that we have been supposing a case in its worst features the same as that revocation, but altogether much less exceptionable and illusory both in substance and manner. That the revocation of the 5th of August was *conditional*, and *prospective* as to the period when it was to take effect, is now universally conceded, whatever doubts might have obtained at first on this head, or whatever difference of sentiment may yet prevail, concerning the nature and number of the conditions. This fact alone would, according to the doctrine maintained in p. 225, be sufficient to

prove the point, which forms our immediate subject—to wit, that the French decrees were not revoked on the 2d of November, consonantly to the tenor of the act of congress. But we intend to go much further.

We shall be content, however, before we proceed to notice the circumstances which distinguish the revocation of August from the case we have supposed above, to rest our argument upon their unquestionable identity in one respect; that of the *proviso* concerning the revival of the non-intercourse at the stipulated period. The evidence of notorious facts and the intermediate official declarations of the French government,* put it beyond doubt, that the revocation of August was not intended by the Emperor to be absolute† until information was received in France of the complete execution of our law on the 2d of February; that in the interval, all our vessels, however circumstanced, entering French ports, even after the 2d of November, were to be sequestered; and that during the same interval, the capture of American vessels under the Berlin and Milan decrees was held lawful, although *confiscation* was not to ensue, but in the event of our failing to revive the non-intercourse against England.—Such then was the pretended revocation of August. We need not suggest the necessary inference.

It is true that neither General Armstrong nor Mr. Madison, originally understood the French government in this sense. The former in his letter to Mr. Pinkney of the 29th September, states his interpretation of the duke of Cadore's first letter to be, that the decrees were absolutely to cease on the 2d of November; and Mr. Madison, according to Mr. Smith's pamphlet, *was "confident" of the same thing*,

* See the letter of the grand judge, minister of justice, to the president of the council of prizes—December 25th, 1810. The following is the material part—"In consequence of this engagement entered into by the government of the United States, *to cause their rights to be respected*, his majesty orders, that all the causes that may be pending in the council of prizes for captures of American vessels, made *after the first of November, and those that may in future be brought before it*, shall not be judged according to the principles of the decrees of Berlin and Milan, but that they shall remain *suspended*; the vessels captured or seized to remain *only in a state of sequestration*, and the rights of the proprietors being reserved for them until the *second of February next*, the period at which the United States having fulfilled the engagement to cause their rights to be respected, the said captures shall be declared null by the council, and the American vessels restored, together with their cargoes, to their proprietors."

† Admitting for the sake of argument,—what we deny,—that the revocation was serious in any respect, or that any revocation was even *possible*, the negative of which we shall establish in the sequel.

*and confident besides, that from that day our commercial relations with France would be incumbered with no restrictions or embarrassments whatever.** Charity compels us to admit that this was the real belief of the Executive; for, otherwise, there is scarcely any term of reproach, or reprobation, which might not be justly applied to his official deportment in this affair. Neither General Armstrong, however, nor Mr. Madison would have fallen into so gross and, for some of our merchants, so injurious a mistake, had they, instead of catching at the general declarations of the duke of Cadore, examined narrowly the conditions annexed to them, and kept in view the characteristic duplicity, and the fundamental policy of the French government.

The language of the official paper which we have cited in the note to the last page, and that great teacher of wisdom, experience, must have completely undeceived them, and those who laboured under the same delusion. It can scarcely be necessary for us to state, what is so universally known, that the American vessels which arrived in France after the 2d of November, were, until a very late period, in all cases sequestered; that during the same interval, captures continued to be permitted under the Berlin and Milan decrees as before, with this modification, however, in our favour, that the cases were suspended in the council of prizes. It is but recently that we have received some vague information concerning the liberation by the authority of the Emperor, of the vessels so sequestered and captured. A few favoured ships, in cases of a peculiar nature, or which answered some temporary object of the French government,† were indeed *specially empowered*

* "The wisdom of a learned man," says the Scripture, "cometh by opportunity of leisure, and he that hath *little business* shall be wise." It would appear, however, that this rule has some exceptions.—What inference favourable to the immediate prosperity of our trade with France, does our *sanguine* and *prophetic* Executive draw from the following declaration of the French emperor in his answer to the Hamburg deputation—"That maritime commerce which constituted your prosperity, cannot henceforth be revived but in conjunction with the restoration of my maritime power. The rights of nations, the liberty of the seas and a general peace must be conquered at one and the same time."

Or how does Mr. Madison interpret the ensuing passage extracted from the last *Exposé* of the state of the French empire? "As for France the continental system has not altered her condition. Since ten years we *have been without maritime commerce, and we shall continue to be without maritime commerce.* The continental system is but in its birth; persevered in for ten years it will &c."

† Permission to return was *bought* by some captains; all were obliged to load with specified articles of French produce, to answer certain fiscal and *political views* of the French government. We were to be duped by a few

in the commencement of the spring, to leave the ports of France after a long detention. Their return here was, with a silly, dogmatical air of triumph, announced by some of our *sanguine* politicians, as an unequivocal proof of the repeal of the decrees, but it served in reality to strengthen the opposite conclusion.

The President, in announcing by his proclamation of the 2d November that, *on the same day*, the French decrees had actually been revoked, promulgated a mistake of very fatal consequence to those of our merchants, who soon after attempted to open a trade with France. Fortunately, however, the number of these was but small, the sagacity of the commercial body being greater, or their credulity less, than that of their *impetuous* and *resolute* chief magistrate. The error into which he was betrayed was mischievous not only in this respect, but in another of much higher importance. The allegation which it occasioned our government to make, of the fact of the revocation as announced in the proclamation, to the British cabinet, and the new demand urged upon this foundation, for the repeal of the orders in council, has, since the bursting of the bubble, not only exhibited us in the ridiculous light of dupes, but, as we fear, operated to confirm our administration in their present disingenuous and alarming policy on this head. The apprehension we here express, will not appear singular to such as reflect on the force of the *amour propre* in statesmen, and on the reluctance which they "who are placed on an eminence that they may have a larger horizon than the simple citizen can command," must feel, to acknowledge before the world, that they have been egregiously deceived.

This consideration may serve in part, to explain the remissness,—to use no harsher term—of our Executive in seeking no formal, official explanation of the precise extent of the revocation of the French decrees, and of the true nature and scope of the conditions annexed to it. When so much of perplexity and doubt was known to hang over a subject of such vast importance, when the British government positively denied the fact announced in the proclamation, and alleged their

cases of indulgence, and so were the French merchants. In the National Intelligencer of April 17th there is a list, said to be correct, of the vessels which had arrived at the port of Bordeaux from the 1st of November 1810, to February 1811 According to this statement all were in fact sequestered, although several of them had nothing on board but native produce and had made direct voyages.

incredulity as the motive for persisting in a system so fatal to our interests, as that of their monstrous retaliation, it was the duty of the American government to seek a thorough elucidation of the meaning and intentions of the French Emperor.

Our executive owed it to Great Britain, who was challenged to relinquish her Orders, on the ground of the revocation of the French decrees on the 2d of November, and to Congress who were called upon, on the same ground, to adopt so serious a measure as the revival of the non-intercourse,—to make every effort to obtain from Bonaparte an explicit avowal of the comprehension which he intended to give to the phrases,—"new principles of blockade" and "the causing our neutral rights to be respected."

When it became notorious that our vessels arriving in France after the 2d of November, were sequestered, although some of them were not even liable to the Berlin and Milan decrees, no pains should have been spared to ascertain officially and without delay, the precise period at which the revocation of these decrees was to become absolute, since the government obviously committed a mistake, in supposing the 2d of November to be that period.

Even Mr. Madison will scarcely pretend that, about the month of February for instance, this point together with the foregoing, were not, to say the least, extremely doubtful, not only to the public at large and to congress, but to himself, and his coadjutors in administration. Nor can he deny that they were of infinite importance, from their close relation with the measures to be pursued against England.—Yet was there displayed not merely a culpable indifference about a full *éclaircissement*, but a strong disinclination to be enlightened;—a petulant fretfulness when there occurred either an opportunity of procuring evidence, or a disclosure of facts explanatory of the truth. We saw an eager disposition on the part of the Executive to pervert the testimony borne by every fresh article of intelligence from France, and a marked preference, if not a firm resolution, on the part of the legislature, to decide, while the subject was still involved in obscurity, or rather before the certain revelations of a few succeeding months, should dissipate every shadow of doubt.

A stranger to our domestic politics, informed of all the circumstances of the case, might naturally have supposed that the American President, as soon as he conceived a suspicion of the mistake into which he had been seduced, would have strain-

ed all his influence to arrest the proceedings of the legislature on this important point, until the reality could be clearly established. An observer of this description might, moreover, with equal readiness have supposed, that Mr. Madison, when he discovered the imposition practised upon him, intead of labouring to conceal or palliate the fact, would have felt it due to his own dignity and to the country, to express a lively sense of indignation for an outrage so humiliating in itself, and leading to consequences of a most serious import to our commerce. For it must be recollected, that the erroneous proclamation, might have done incalculably more mischief to our trade, than it actually produced, had it not been for the salutary incredulity of our merchants; whose sad experience emboldened them to incur the risk, of being charged with pretending to "lights when hallow'd eyes were blind."

Were we to request an impartial foreigner, to pronounce upon the conduct of our congress in this instance, we should tremble to hear the decision, if he undertook to award to the American people their proper share of the disgrace, as the constituents of this body. Congress had solemnly pledged itself by the law of May, to allow an interval of three months to elapse, after the revocation by one belligerent of her decrees in the way therein described, before the non-intercourse should be revived against the other. Was it not then imperiously bound both to the latter and to its own honour, to postpone the complete execution of the law until all the alternatives were satisfied;—until the clearest proof existed that the revocation was such as the law required; and likewise—until the full term of three months had then intervened? Would it not have been more becoming, just and prudent, if they had refused to expose themselves, to the chance of seeing their official asseveration of a fact refuted, and their all important edict against England, involving this asseveration, stultified and exploded as it were, by the disclosures perhaps of the very next day, after the die was cast? Or, if they had determined to break through the obligation imposed on them by their own law;—to overlook the probable delinquency or treachery of France, and at all events to revive the non-intercourse against England, would it not have been more manly and reputable, to have proclaimed their real motives, than to have made a stalking horse of legislative faith, when they were in the act of violating it, and to have assumed as the ground of their proceedings a fact, of which they could not be sure, and of which the mere

suggestion is almost sufficient, to excite a smile of disdain and derision, in the face of the unprejudiced portion of the world?

The public cannot be at a loss for an answer to these questions, nor can any good American be otherwise than overwhelmed with shame, when the history of this transaction is presented to his view. We say nothing of the *manner* in which the business was carried through the lower house,—so repugnant to the character of gravity and sobriety, to all the decencies and courtesies, which should belong essentially to the deliberative assemblies of a nation like this. We must confess, that we can scarcely keep within the bounds of the temperance of phrase, from which we never wish to depart in this Journal, when, penetrated with that affectionate solicitude for the honour and welfare of this country, which every motive conspires to awaken in our bosoms, we look back, in sorrow and indignation, upon the conduct of all the branches of our government, since the commencement of this new juggle of the French Emperor.

In no one instance has there been either wisdom in their deliberations, or fortitude in their conduct. Never certainly have the public councils of any nation exhibited, within so short a period, so much of conscious imbecility and vainglorious menace;—so much of shameless inconsistency and clumsy disingenuousness,—so much of pedantry and foppery,—of bold pretension and puling apology.* Every step of our administration has indicated, if not what Bolingbroke calls "sousing prostitution," at least a combination of weakness and folly, of narrow prejudice, and low artifice, calculated to produce effects equally disastrous. In their habitual policy there is nothing but what is ignoble and inglorious, confused and grovelling; illiberal and sordid;—what is fitted to emasculate and degrade the state, to lower the conceptions of the nation, and blunt her moral sense, the corner-stone upon which the fabric of our liberty rests.

* On this head no language can be deemed too harsh, after the following confession made by the governmental paper at Washington in March last—"It is still the unsettled point whether it is the policy of the American nation by force of arms to defend commerce; we say the unsettled point; for we may talk as we please, but it is still unsettled. *Hence all our inconsistency, our tergiversation, our high-toned style, and our inert conduct.* Instead of a decided, unambiguous course, we have mixed up the ingredients of a warlike and pacific policy into a compound, which has proved in the end, to use a vulgar phrase, neither one thing nor the other. All calculation and expectation have failed; and the various experiments, successively tried, not resulting in either peace or war; we have reached an equivocal state that defies definition."

We can conceive nothing more ridiculous than the succession of legislative fulminations,—*fulmina parliamentaria*,—of angry resolves and arrogant declarations, which we have witnessed for some time past, and of which the issue has been mischievous and formidable only to ourselves. What can be imagined more contemptible and disgraceful, than that unwieldy apparatus of temporizing expedients, called the *embargo system*, for which so much credit is claimed by its mountebank inventors, and of which the energies, so ostentatiously vaunted, are like those of the disciplinary scourge of a penitent monk, terrible and lacerative, only to the shoulders of the flagellant?

Emotions and fears similar to those which arise in the mind from the general aspect of our national councils, must be felt by every sincere and enlightened well-wisher of the country, who dwells upon the character of our present chief magistrate, as developed in his official proceedings, and as it stands exposed in the pamphlet of Mr. Smith. Even the most sanguine can cherish no hope of the extrication of the public weal, from the maze of preposterous schemes and dishonourable embarrassments in which it is involved,—of the resurrection of the public spirit, or the purification of the public appetite, while either our foreign or domestic politics, are even partially influenced, by the clandestine author of Macon's bills,—the parent of the present non-intercourse—and the patron of such measures as the demolition of the national bank, and the secret law for the occupation of *East Florida*. While we remain even *nominally* under such auspices, there can be no expectation, that the presidential chair will regain any portion of the lustre thrown around it by Washington, or that the importance and dignity of the state will be otherwise than as they now are,—lowered with those of the individual, and contracted to the same dimensions. Who is it possessed of a "generous, refined sense of glory and emulation," that will condescend to aim at public rewards and distinctions while the distribution of them remains in such hands;—who of this description, that is not ready to exclaim with the poet,—

——— *Quis non consule tali*
Vilis honos?

But we should apologize to our readers for this train of observation, which can be scarcely less mortifying to them, than it is painful to us. To return then to the French decrees.

We think we have made it sufficiently apparent, that

they were not repealed on the second of November last, conformably to the law of congress. It remains for us to show, that they are not even at this time so revoked or modified, as to have ceased to violate our neutral rights;—that they have in fact, undergone no change or modification whatever. We feel assured that the secret conviction of every intelligent observer, on this subject, is in unison with our own. The discussion may, nevertheless, be productive of salutary effects.

Since the more recent declarations of the French emperor with respect to his decrees, it is, as it must be, universally admitted, that they still exist;—that they are still "the fundamental laws of the empire." The distinction taken here by his Imperial Majesty's partisans,—a distinction drawn in part from their own overweening fondness for French alliance, and from the *qualified* declarations of the *Moniteur*, is, that although the decrees must be allowed to exist for some purposes, since it is positively so announced by the French government, yet that they are abrogated as regards *us*, this country having complied with the Emperor's wishes.

We should suggest by the way, that the resuscitation of the decrees in any shape, must be a matter of some surprise and perplexity, for those who contend, that the engagements, contracted by France, in the Duke of Cadore's first letter, upon which the President's proclamation was founded, were regularly fulfilled, and that the alternative prescribed to us, was nothing more than the execution of our law of May. The letter of Cadore announced, it is true, a *conditional revocation;* but, upon the accomplishment of the condition, that revocation was to be total, and not limited by a reference to us alone, or to any particular power. The terms of the letter are so broad and general, as not to admit, by any possibility, of different construction. It was understood from this document, by those even who take the distinction above mentioned, that the decrees were to be utterly extinct;—blotted from the statute-book.

We cannot do better than to lay before our readers the most recent of the public declarations of the French government, undeniably official, concerning its decrees, and to examine what they establish with respect to their vitality and character.—The answer given on the 20th March last by the French Emperor to the deputation from the cities of Hamburg and Bremen, and which was published in the Moniteur, contains the following language.

"The decrees of Berlin and Milan are the fundamental law of my empire; they cease to have their effect, or to operate, only as

to those nations which defend their sovereignty and maintain the religion of their flag. The decrees of Berlin and Milan, *resulting from the nature of things*, shall continue to form the public code of my empire, as long as England perseveres in her orders in council of 1806 and 1807, and violates the stipulations of the treaty of Utrecht."

The declaration contained in this last sentence was made in the preceding month, by the French minister of foreign affairs, in his Report to the emperor on the state of the empire.—Champagny addresses his sovereign in this language: "Your majesty will persist in maintaining your decrees, as long as England shall adhere to her orders in council." The phrase was construed in England according to its obvious or literal sense. The Marquis Wellesley in his answer to an application of the committee of American merchants, remarked that, according to this declaration of Champagny, the French decrees could not be repealed, since the Orders in Council were still in existence. The English newspaper, *The Times*, repeated this observation. To the comments of the Times, the Moniteur, in order to reconcile the seeming contradiction, published on the first of March last, the following rejoinder from the French government.

"The alleged contradiction is not difficult to explain. The decrees of Berlin and Milan are withdrawn as to America, because America is taking measures to cause her flag to be respected;—because she prevents it from being denationalized, and because she refuses to submit to the orders of 1806 and 1807. The other neutral powers who shall acknowledge the British orders in council of 1806 and 1807, and who shall not make opposition to the pressure of these orders upon them, shall be henceforth subject to the decrees of Berlin and Milan. These decrees are not then withdrawn as regards them. The minister of exterior relations was therefore entitled to say, "Your majesty will *persist* in maintaining your decrees as long as England shall maintain her orders in council." He might have added, (*but that was unnecessary, since it is so expressed verbally, in the Milan decree*) that the decrees of Berlin and Milan *will* be repealed for those nations, who shall cause their flag to be respected, and maintain its neutrality."

"The decrees of Berlin and Milan are not arbitrary acts;* *they result from the nature of things. They can neither be changed, nor modified, nor suspended.* The flag of every neutral nation, who causes it to be respected, is regarded as neutral and national; *it is not within the reach or scope of the Milan and Berlin decrees.* On the contrary, every flag which a *feeble* or *pusillanimous* nation suffers to be *insulted and denationalized* cannot, from that very circumstance, be acknowledged as neutral; it has become English. *The decrees of*

* Matters of positive law.

Berlin and Milan will be eternally the fundamental law of France, because they spring from the nature of things; and whenever England reverts to her blockades upon paper, the decrees of Berlin and Milan will resume, of right, their full activity. England shall also be blockaded *on paper.*"*

Such is the formal, authoritative, decisive explanation of the French government with respect to the existence and genius of its decrees. Let us now stop to trace the consequences necessarily flowing from the character given to them.—We should however, beg our readers to make one preliminary remark with us. It is, that in the foregoing declarations, our act of May is put entirely out of the question. According to the imperial doctrine, which must certainly be the true one in the case,—that act could have had no connexion with the proceedings of the French government in relation to the decrees. Their repeal, whether *past* or *future*, is placed upon grounds wholly independent and exclusory of the proposition or overture contained in the act of May: a circumstance which gives quite another aspect to the affair, than that under which our administration affect to view it. This circumstance, we say, gives the affair quite a different aspect, inasmuch as it repels the idea of any thing like a *contract or engagement*, between us and the French government, founded upon the law of May, and thus destroys one of the principal reasons already urged

* The following is the text of the original.

" Cela n'est cependant pas difficile à comprendre. Les décrets de Berlin et de Milan sont rapportés pour l'Amérique, parceque l'Amérique prend des mesures pour faire respecter son pavillon, qu'elle empêche qu'il ne soit dénationalisé, et qu'elle refuse de se soumettre aux arrêtes de 1806 et de 1807. Les autres puissances neutres qui reconnaitrent les arrêtes du conseil Britannique de 1806 et 1807, et qui ne s'opposeraient pas à ce que ces actes pèsent sur elles, seraient des-lors sujettes aux décrets de Berlin et de Milan. Ces décrets ne sont donc pas rapportés quant à elles. Le ministre des relations extérieures a donc pû dire, que " S. M. *persistera* à maintenir ses dé- " crets, tant que l'Angleterre maintiendra ses ordres du conseil." Il aurait pû dire, mais cela était inutile, *puisque cette declaration se trouve textuellement dans le décret de Milan, que les décrets de Berlin et de Milan seront rapportés pour les nations qui feront respecter leur pavillon et qui en maintiendront la neutralité.*"

" Les décrets de Berlin et de Milan ne sont pas des actes arbitraires; ils dérivent de la nature des choses: on ne peut ni les changer, ni les modifier, ni les suspendre. Le pavillon de toute nation neutre qui le fait respecter, est considéré comme national et comme neutre: il n'est pas atteint par les décrets de Berlin et de Milan. Au contraire, tout pavillon qu'une nation faible ou pusillanime laisse insulter et dénationaliser, ne peut plus, par cela, même être reconnu comme neutre: il est devenu Anglais. Les décrets de Berlin et de Milan seront éternellement la loi fondamentale de la France, parcequ'ils dérivent de la nature des choses: et toutes les fois que l'Angleterre reviendra à ses actes de blocus *sur le papier*, les décrets de Berlin et de Milan reprendront de droit toute leur force. L'Angleterre sera aussi bloquée *sur le papier.*"

in congress for the revival, and which may hereafter be advanced, in favour of the continuance, of the non-intercourse against England.

But to proceed.—The French decrees are then the fundamental law of the empire, which even the emperor, by the imperial constitutions,—is declared *morally* incompetent to destroy or to alter.—They are not even matters of positive law, or to be affected by human legislation.—They flow from the nature of things; and therefore, as the Moniteur well remarks, are not susceptible of being either altered or *modified*, or suspended.—They are *necessarily*, essentially correlative and co-existent with the British orders in council, and British paper blockades of every description—Of course they still flourish in all their vigour for every neutral power.—While the British maintain even one paper blockade, the French decrees must exist unchanged and unchangeable, and no neutral nation can, by any act of her own, procure either their revocation, *modification*, or suspension. There are indeed, certain measures within the power of the neutral, by the adoption of which, she can render them no longer applicable to her; by which she may, to use the idea of the Moniteur, put herself beyond the proper sphere of their operation;—and that is all. In fact, the use of the terms, *revoked*, *modified*, or *suspended*, in this instance, is altogether improper, and involves a solecism in language. The only correct phraseology, in case the neutral "causes her rights to be respected," is,—not that the decrees are *repealed* or *modified* as regards her,—but that she is no longer subject to their operation;—that she is within the sole exception to the "eternal code." The emperor cannot, moreover, even *promise* to revoke or *modify* them. He can do no more, in case the neutral "maintains the religion of her flag," than pledge himself not to give them an undue extension, or, to employ them as pretexts.

Let our readers decide, whether their government can with any colour of reason or consistency maintain, that France has so modified or revoked her edicts, as that they have ceased to violate our rights!

We are now regularly conducted to another material inquiry, with which, and a few general remarks, we shall terminate this article. Taking it then for granted that the French edicts are yet in full force, since the English have not revoked their orders in council, are we no longer *liable* to the former? or has the revival of the non-intercourse brought us within the saving clause of the Milan decree, referred to in the Moniteur, and

substantively repeated, in the passage we have quoted, from the French emperor's answer to the Hamburg deputation? The reader need not we presume be reminded that our exemption from the operation of the French decrees, depends, under the official explanations of France, upon the answer to this last point, and not upon the question whether we have complied with the stipulations of the act of May. The revival or continuance of the non-intercourse can, in the view of the French government, affect the agency of its decrees, in no manner whatever, unless it should consider this measure as tantamount to a complete *defence of our sovereignty*, or at least as the first of a series destined to accomplish this object.

The preliminary questions, the solution of which involves necessarily, that of the points stated in the commencement of the last paragraph, are, then, whether the French emperor can or will admit, that by the mere continuance of the non-intercourse we do efficiently maintain our rights, defend our sovereignty, and *compel* the British to respect our flag?—Or, whether we ourselves will be willing to admit, that the non-intercourse is the first of a series of coercive measures which we stand pledged to execute, and which is to terminate in war, should the rest prove abortive. It is perhaps enough for our purpose merely to have stated these questions, so obvious is the truth of the case.—With regard to the second, we need offer no remarks.

As to the first, we have already solved it by what we have said in our first number, concerning the meaning which the French emperor does, and in consistency must, attach to the phrase "cause our rights to be respected."* We shall, however, venture upon some additional observations. The sentence pronounced by his imperial majesty, upon the non-intercourse as a measure of coercion is too well known to require repetition, and precludes even the supposition that he can or will consider it as sufficient to *compel* the British to respect our flag.—Experience has rendered the impotency of this measure too notorious to be questioned. To show, however, that something more is required, as an adequate "*defence of our sovereignty*," we need but refer to the very solemn explanation of the phrase, given at various times by the French ruler.

In the Moniteur of March, it is said, as we have already seen, that every flag which a pusillanimous or feeble nation suffers to be insulted or *denationalized*, becomes English; or in other words, a nation which allows this, abdicates her sovereignty.

* See page 66, vol. i. A. Rev.

Now in the Milan decree it is declared, that every ship to whatever nation she may belong, which submits to be *searched* by an English ship, is, on that account alone, *denationalized.* The Milan decree is yet, according to his imperial majesty, the *fundamental* law of the empire, and he cannot therefore, recede from this doctrine. Thus if we do not resist the right of search, we do not "defend our sovereignty," or "maintain the religion of our flag," and consequently, cannot be ranked among "those nations, against whom alone the decrees cease to have their effect."

If this inference were not too strong to admit of being enforced, it might receive confirmation from the language used by the French minister of foreign relations, in his report concerning the affairs of Portugal. We have already quoted the passage to which we allude. It deserves however, to be repeated here. "When the Portuguese government," says the minister, "suffered its ships to be *visited* by English ships, *its independence was as much violated by its own consent*, by the outrage done to its flag, as it would have been had England violated its territories and its ports." There is nothing *quoad hoc*, to distinguish our case from that of Portugal, and no reason why his imperial majesty should not extend the same doctrine to this country. It imposes upon us, as our readers must perceive, the necessity of asserting and defending the principle that "free ships make free goods."*

It would appear from the language of the emperor, in his speech of *last June* to the legislative body, and from that of the Moniteur of March, that he *affects* to consider us as beginning, by our non-intercourse, to execute against the British, a plan of coercion, embracing all the objects he has prescribed, and as entitled on this account to some indulgence. "America," says the speech, "is *making* efforts to establish the liberty of her flag." "The decrees," says the Moniteur, speaking *figuratively*, "are withdrawn (*rapportés*), as to America, because America is *taking* measures to cause her flag to

* The American government has at all times recognised the belligerent right of search, and submitted without opposition to the enforcement of it by the British—now if our administration continue disposed to admit this right, and if the Milan decree be, as the French government asserts, yet in full force,—the very French edict chiefly within the view of our law of May 1810, still makes it *heavily penal* for us, to acquiesce in a belligerent practice on the part of the British, which we acknowledge to be warranted by the law of nations. In such a state of things, it certainly will not be pretended that France has complied with the requisitions of the act of May, unless it be previously affirmed, that to submit to the exercise of an established belligerent privilege, is not among the number of our neutral rights.

be respected,—because she prevents her flag from being denationalized,—and because she refuses to submit to the Orders in Council of 1806 and 1807." It is no where said by the French government, that the decrees are repealed as regards this country,—or to speak more correctly, that they are no longer applicable to us,—because we have executed our law of May, or merely because we refuse to submit to the British Orders, *which, according to the doctrine of our rulers, is all that our non-intercourse can be held to imply.*

The idea of a contract between us, is, as we have before remarked, never once suggested, but indeed virtually precluded, and the decrees are said to be withdrawn in our favour, not solely because we refuse to submit to the British Orders, but because, *in addition to and distinctively from this*, we are *taking* measures to cause our flag to be respected, (a most ominous phrase when we advert to its application in the case of Portugal) and *also* because we prevent our flag from being *denationalized.* Were we not so well apprized of the sagacity and treachery of the French government, or could we fathom all the secret designs, or answer for all the *secret* engagements of our administration, we would say,—Here is a mistake;—we are taking no measures distinct from the non-intercourse to cause our flag to be respected;—we do not prevent, or mean to attempt to prevent our flag from being *denationalized* in the French sense;—consequently the French emperor is wrong in supposing that he is entitled to consider us as no longer subject to his decrees, and as he must soon be undeceived, we ourselves err egregiously, if we suppose, that we shall long escape, or rather ever be exempted from their operation.

It is not, however, impossible but that Bonaparte may be inclined for some time longer, to appear satisfied with our non-intercourse, and to refrain from insisting peremptorily upon a full acquiescence in *his* plan for the defence of our sovereignty. The pretended revocation of August was in part a fiscal device, and has been found tolerably successful.* The

* In the *exposé* made in July last by "the orator of the government" to the French legislative body, concerning the "ways and means" of the present year, we find the following language—"The receipts of 1811 are estimated at 954,000,000 franks, 159 millions more that those of 1810. This considerable augmentation arises from three causes—1st. The addition to the budget of the revenues of the countries recently incorporated, and of those of Illyria. 2d. The amelioration of several branches of the public revenue. 3d. *The application of new principles to the importation of certain commodities*, and to the consumption of tobacco. The greater perfection given to the system of customhouse impost."

"The customhouses have given an increase of revenue since 1810, owing to the establishment of the duties on colonial articles. These duties have trans-

additional resource which it opened for his treasury, by the collection of the enormous duties imposed upon colonial produce, and the vent of some small portion of the products of the French soil and manufactures, may be still useful. A sufficient number of our *licensed* vessels may escape the vigilance of the British cruisers, to answer his purpose, and if they do not, the irritation excited among us by their capture, combined with the feelings which a state of non-intercourse will keep alive, may propel us to the catastrophe, which forms the principal object of all his measures in our regard.

He looks undoubtedly to the occupation, at no distant period, of the seaports of Spain, through which it will be material for him to obtain supplies for his armies engaged in accomplishing the subjugation of the peninsula. As those supplies must be furnished by the United States, prudence would seem to dictate, that he should not proceed to immediate extremities against us, but be content to consult his present interests, by tolerating,—under circumstances indeed of the heaviest oppression to the individuals concerned, and of the foulest dishonour to the American name,—the few of our vessels which the temerity of mercantile enterprise may allow to frequent his ports. At the same time a trade *under special license*, so limited in its extent, so strictly guarded in its minutest details, so oppressively shackled, so completely enslaved, so miserably degraded, as that which he now suffers to exist, cannot interfere with his plan for the final extinction of commerce and the debasement of the commercial spirit, but on the contrary may rather serve to facilitate its ulterior accomplishment, by promoting the system of strict coercion and minute supervision which he is labouring to establish over the whole commercial industry of his immense empire, and by exhibiting the spectacle of a great commercial nation submitting to prosecute a trade so circumstanced, from motives in her government such as every American must blush to recollect, and notwithstanding considerations to the contrary, the most imperious, which honour and sound policy can furnish.

ferred to the chests of the public administration a part of those profits which were divided among the ship owners to whom freight was paid; the insurance offices or individual insurers who received premiums; and our enemies or our neighbours, who speculated advantageously upon the sale or deposit."

"The *entrepots* on our coasts or frontiers have been broken up; our line of customhouses extended to the shores of the Texel, and of the Ems, of the Elbe and the Weser, has put an end to all fraudulent importation. The activity of English monopolists, the cupidity of the insurers of every country, the hardihood of pedlars will hereafter be baffled."

A letter to Alexander Baring Esq. on the present state of the Currency of Great Britain.

The disquisition which we are about to lay before the American public, addressed to one, who ranks at the same time among the most eminent merchants, and the ablest politicians of Great Britain, was not originally intended to be published in this country, but upon reflection, we have thought proper to give it a place in this journal, believing that it will be perused with interest, and found to contain much valuable instruction. We shall beg leave to preface it with a summary account which the author has communicated to us, of the nature of the controversy that now, in England, excites so great and such general agitation; an account perhaps the more necessary, as a large proportion of our readers cannot be presumed to be as well acquainted with the subject, as the gentleman to whom the letter is addressed.

The bank of England was first incorporated in the year 1694. Their capital originally consisted of 1,200,000*l.* sterling, and was gradually enlarged till it amounted, in 1746, to 10,780,000*l.* sterling, which *dividend* capital, as it is called, has still further increased by the gradual accumulation of undivided profits, so that it now exceeds the sum of fifteen millions of pounds sterling.

In point of organization, this institution resembles the banks in this country, all of which may be said to have been framed on the British model. It receives deposits, issues notes payable on demand, discounts bills of sixty and ninety days, and makes occasional advances to government.

Eleven millions, six hundred and twenty-six thousand pounds of its capital, are permanently loaned to government at three per cent., and a considerable proportion of its funds are employed, besides, in advances on exchequer bills, which may be considered as promissory notes of government.

The *legal tender* in England, which formerly, as in most European countries, was silver, has been confined to *gold*, since the 39th of the present king, except for payments under 25*l.* sterling.

The notes of the bank of England, therefore, expressing a certain sum in pounds sterling, were strictly and on demand payable in guineas, and thus paid till the 26th of February 1797. The amount of their notes in circulation, in the years last preceding the year 1797, have varied from eight to

fourteen millions of pounds sterling, and may be said to have averaged eleven millions, whilst they used to keep in their coffers from two to six millions, in coin and bullion, for the purpose of meeting occasional demands.

There is, besides the bank of England, no other chartered bank in Great Britain, but there are a great number of private banks, even in the city of London, and still more in the country, all of which issue notes, payable on demand. The aggregate number of these banks in Great Britain, is now computed at seven hundred and fifty, and the joint amount of their issues is presumed to be about equal to the amount of notes issued by the bank of England.

These private and country banks, as rival institutions, preventing the monopoly of the trade of money lending, produce all the benefit of our numerous chartered banks, with this essential difference, that their paper is payable not in gold and silver, but in bank of England notes, so that a legislative control over the national bank, gives to government a control over all the currency of the empire. For, since every private or country bank, must provide bank of England notes to meet their engagements on demand, in the same way as the national bank had to provide gold for the same purpose, previously to 1797—the issues of private and country banks, must in a great measure depend on the facility or difficulty of procuring notes of the bank of England, as the issues of this institution depended formerly on the facility or difficulty of procuring gold.

Almost all the coin in England is put in circulation by the bank, who had therefore, previously to 1797, constantly to purchase gold bullion, to send to the mint, where it was converted into guineas, and then returned to them free of any charge, the public bearing the expense of that establishment.

An ounce of gold, of standard fineness, was worth 3*l.* 17*s.* 10½*d.* sterling. This therefore was called the *mint price of gold*, which, consequently, was always equal to the nominal value of the bank of England notes.

From this *mint price of gold*, the *market price of gold*, or of *gold bullion*—which is the comprehensive term for all gold not guineas—frequently differed. Gold bullion could never be *lower* than the mint price, because the bank was always ready to give 3*l.* 17*s.* 10½*d.* sterling per ounce of standard fineness, but it was often higher:—it often bore a premium in the same way, and for the same reasons, as Spanish dollars often have borne a premium here;—it answered certain purposes abroad which bank notes could not, and guineas were not allowed to answer, because their exportation was prohibited by law.

In consequence of this law, whenever a person wanted to export gold bullion, he was obliged to take an oath before an alderman, that it had not been melted down from guineas. This has given rise to the expressions of gold which may be *sworn off*, and gold which *cannot be sworn off*.

But, though it was intended by this law to keep in the country, not only all the guineas, but all the gold that ever had been coined into guineas, it is obviously so easily eluded as to make it very questionable whether it has not, like most laws which it is impossible to inforce, proved more injurious than beneficial.

This impossibility of preventing guineas, as guineas, or when melted down into bullion, from leaving the country whenever the lowness of foreign exchanges, that is, the *cheapness* of pound sterling bills,—that is, *of orders for bank of England notes* abroad,—or other commercial objects invited to their exportation and investment in *distant* countries; this impossibility we say, as well as the home consumption of gold by various manufactures, which would naturally tend in some degree to diminish the guineas in circulation, often caused the *market price* of gold to rise above the *mint price*, and forced the bank, always obliged to provide guineas, to pay 4*l.* sterling and upwards per ounce for gold of standard fineness, whilst they paid it away when coined at 3*l.* 17*s.* 10½*d.* sterling, thus losing from two to three per cent. in the process.

Whenever this occurred, people could not be wanting who took advantage of the circumstance, and called on the bank for guineas, in order to melt them down, and sell them to the bank again, in the shape of bullion, at an advanced price.

To put an end to this abuse, as well as to check the exportation of gold, and stop the *run on them*, as it was termed, the bank had no other means than to lessen the amount of their notes in circulation by diminishing their discounts. This generally had the effect of creating a scarcity of money, which rendered all commodities cheaper, caused therefore gold to fall, foreign exchanges to improve, and the call on the bank for guineas to be discontinued.

To this remedy therefore, the bank had recourse when, towards the end of the year 1795, and during the whole of 1796, the calls on them for guineas became more and more frequent, and their stock of cash and bullion dwindled from four millions to two millions and a half, till in the beginning of 1797 there remained in their vaults scarcely half this sum. They reduced their notes in circulation from eleven millions to eight millions; but this reduction, instead of proving, as usual, beneficial, seemed to aggravate the evil, because it arose in a great mea-

sure, from a new cause;—from the alarm of an invasion which occasioned guineas to be withdrawn from circulation and hoarded.

The moment was approaching, when the bank would have been obliged to stop payment from inability; an event which would have heightened the alarm into consternation; which would have left the nation without a circulating medium; would have deprived government of the means of making any efforts for the public good, at a crisis when the preservation of the country required the most vigorous exertion of all its energies, and which might have terminated in a total dissolution of the body politic and the complete triumph of their foe, by the mere moral effect of his immense preparations.

To avert this sad catastrophe, parliament interfered. By an act, called the *Restriction act*, they obliged the bank to discontinue their cash payments; and thus the great, and, in its consequences, most important experiment came to be tried, of the efficiency of a paper medium of circulation, not convertible into specie, but having for its foundation substantial property, pledged to a company of discerning and independent men, as security for their advances.

The bank, after the passing of this act, had it in their power to be more liberal in their accommodations, and to increase their issues, which, of course, were soon augmented to their former standard. Individual embarrassments were thus diminished, government was able to pursue a course of measures for defence adequate to the impending danger, confidence was restored, the alarm of an invasion subsided, guineas reappeared in abundance, and the market price of gold remained equal to the mint price, till the year 1800, though the bank, during this period, increased their issues to thirteen millions and a half.

This, as well as the subsequent augmentations of their notes arose, at least in part, from the necessity of issuing small notes, that is notes under five pounds, in lieu of guineas, in which the bank was no longer allowed to pay, and which therefore gradually took the place of the latter, of which the average amount in circulation, previously to this period, has been estimated from sixteen to twenty millions of pounds sterling.

Guineas could not fail of diminishing in number in proportion, as they were no longer indispensably necessary for circulation. When, therefore, in the years 1800 and 1801, in consequence of a failure of crops, vast importations of grain took place from the continent, which were chiefly to be paid for in cash, the *market price* of gold soon rose from 3*l.* 17*s.* 10½*d.*

to 4*l.* 5*s.* sterling; while bank notes, to replace the disappearing guineas, were increased to nearly sixteen millions.

During the years 1802, 3, 4 and 5—the crops having been good and trade in general prosperous—the market price of gold again fell to 4*l.* sterling, at which it remained steady during those years, though bank notes gradually augmented to nineteen millions.

From that time the market price of gold began uninterruptedly to advance till 1809, when the north of Germany was occupied by French troops, when the "*continental system*" began to be rigorously inforced, when the military operations of Great Britain in Portugal and Spain caused the disbursement of vast sums, and when bank notes had increased to more than twenty millions, whilst guineas disappeared,—it reached 4*l.* 12*s.* sterling, which is equal to about eighteen per cent. above its mint price.

Parliament then thought proper to appoint a committee, for the purpose of inquiring into, and examining, the causes of this high price of gold bullion.—The committee met; called before them the governor and deputy governor, and one of the directors of the bank, three of the principal dealers in gold bullion, some merchants, distinguished for their general information and knowledge, and several other persons, all of whom were minutely interrogated on the subject under investigation.

The committee reported. Their report, with the minutes of evidence, and the statement attached to it, printed and published by order of parliament, occupies more than one hundred and fifty folio pages, and contains in substance;—that the committee, after a careful examination of all the evidence they had been able to collect, were of opinion that the unprecedented high price of gold bullion must be principally attributed to an excessive issue of the notes of the bank of England, which in consequence of this excess had depreciated in value; and recommended as the only remedy for the evil, as well as the only means of averting impending disasters much more serious, a compulsory resumption of the cash payments of the bank, within the period of two years.

This report not only caused very long and animated debates in both houses of parliament, but also engaged the pens of a great many of the most distinguished politicians in England, either in its defence, or in attempts at combating its doctrines;—either to establish the depreciation of the currency, or to prove the augmented value of gold. The discussions, which certainly involve in them interests of the greatest magnitude, are still

continued on both sides with much ardor, and all England may be considered as divided into bullionists and antibullionists, both perhaps not a little influenced by party zeal and collateral considerations, arising from their political creeds and the peculiar situation of the country. The measure recommended by the committee has not been adopted.

The ulterior fate of the currency of Great Britain; the question whether inconvertible paper can be made to answer, in a country so circumstanced, the purposes of circulating medium, and be maintained in value, ought certainly to excite a deep interest *here*. On it, in some measure, will depend the successful or unsuccessful issue of the present contest between Great Britain and France; a contest, which, but for this expedient of rendering her currency inconvertible, she must, perhaps, have abandoned ere this, and with the final termination of which, will begin a new and momentous, and, it is to be hoped, not inauspicious era for the United States.

It is also to be observed that with institutions similar to those of Great Britain, with a system of internal polity, and a financial fabric essentially congenial, their distant results, the ultimate national blessings or disasters to which they lead, as exemplified in Great Britain, become of vast importance to this country. Not only the results themselves, but the manner in which they ensue, should be watched with scrupulous attention; for *facts teach nothing unless they are understood*, and the dogmas of crude and shallow experience are the more to be dreaded, as they carry along with them undue popular weight. The experiment now making in Great Britain may possibly fail; not because an inconvertible currency is incompatible with the permanent prosperity of a state, but because, from want of foresight, or from the irresistible pressure of political necessities, it was not made with sufficient regard to those prudential restrictive measures, which its success would have required.

Perhaps the legislators and politicians of this country will ask themselves, what would become of the numerous independent *banks* spread over the surface of the Union, if, from slight variations in the value of the precious metals in neighbouring states, they were subject, as the bank of England, to experience a drain of their specie; and what be the fate of the *nation*, if she should *then* have to contend with an enemy, sagacious enough to know how to profit by the circumstance?—A more monstrous inconsistency than a government like that of the United States, since the dissolution of their bank, charged with the care of the integrity and prosperity of the empire, without any

direct or indirect control over its currency, though chiefly paper, by means of a national institution, cannot perhaps be imagined!

It is true, that by means of the Federal Constitution, reconciling national unity to diversity of local interests, the United States—half a continent—have in a great measure secured to themselves, the vast advantage of an insular situation. They are encompassed by the waves of the ocean on one side and by immeasurable tracts of forests on the other. We even enjoy the still greater advantage, of an insular situation, remote from the turbulent nations of Europe,—sufficiently near to benefit by their improvements,—and yet not so near—with wisdom and firmness at home,—as necessarily to involve us in their broils and convulsions. But, may it be asked,—if ever this extensive Union, from the weight of a thronged population, or an uncontrollable diversity of powerful local interests, should break asunder—are our institutions so framed as to secure its prosperity, under the emergencies which may then occur? We trust that in themselves they are; but we believe at the same time that this event will, in no slight degree, depend on the dispositions and abilities with which they are now administered.

Some at least of those who are placed in the councils of the nation will recollect, that the blessings on which we pride ourselves are not the work of the day. Particular turns of thought and an enterprising love of independence, first derived by Britons from the woods of ancient Germany, half stifled at one time by political occurrences, then rekindled and nourished by others; refined by the speculative meditations of some of the wisest and best men the world has ever produced; gradually incorporated with their institutions, interwoven with their very language, habits and manners;—such are the sources of the political happiness, which they and we enjoy; a happiness which a mighty nation in our time thought it only necessary to *know* and *to will*, in order to *grasp* and to *possess*. But the effort proved lamentably abortive. With nations as with individuals, *what they have been* more than *what they wish to be* determines their mode of existence.

Some at least of our legislators, will think it right to consider, not only what measures under certain circumstances, may be expedient or flattering to the passions of the hour, but what will be productive of great and permanent advantages;—what most conducive to preserve the inestimable boon of a government of laws, and national independence, during the hazards to which, in the course of human affairs, they are

likely to be exposed; a boon derived by the people of this country from their ancestors here and in Great Britain, and which, when they advert to the military despotism that threatens to overwhelm mankind, it becomes their particular duty, now to consolidate and secure for their posterity.

ALEXANDER BARING, ESQ.

DEAR SIR,

Since I had the pleasure of addressing you last I have had an opportunity of reading the report of your Bullion committee, and several of the various publications to which that report has given rise. I cannot help thinking that both parties, in endeavoring to establish their respective opinions, with regard to the apparent or real depreciation of the paper of the bank of England, have pushed their arguments too far, and missed the truth, which, in this instance, as mostly when intelligent men differ, probably lies between them.

Permit me to communicate to you some observations on the subject, which, I flatter myself, you will not find totally uninteresting.

I shall begin with adverting to a few *theoretical points*, believing that the Bullion committee, from having neglected to develop and to settle them, not only have been led into some mistakes themselves, but also have failed to produce conviction on those who opposed them, even where the opinions for which they contended were correct.

It is admitted, I believe, by all men who have investigated the subject, that the *quantity* of circulating medium in a country is one of the circumstances on which the prices of the various commodities, valued in that medium, principally depend. The general advance of prices in Europe since the discovery of the new world, which rendered the precious metals—till of late the circulating medium of all European nations—more abundant than they were before, would be an irresistible proof in point of fact, were not the position so evident in itself as to need none.

But in *what manner* prices advance, when the quantity of circulating medium increases, is a question not equally well understood.

The effect on prices which an increased quantity of circulating medium produces, must, obviously, depend much on

the mode in which such increase takes place, and on the concomitant circumstances.

If we suppose for instance, that the exact measure of the increase were at once generally known, and practically felt by nearly every individual of the nation, the probability is, that the prices of all commodities would advance at once in the same ratio. If government had discovered, appropriated, and caused to be explored, a new gold mine of extraordinary fertility, and had in consequence of it determined to double the circulating medium of the nation; and if a day had been appointed throughout the country when every individual appearing before the proper authority, should receive on public account as many guineas as he was able to show, prices would double from that day, because every one would be disposed to ask twice the usual rates, for what articles he had to offer for sale, from his greater ability of holding, and from his knowledge of the universally acquired faculty, among the purchasers, of paying them. Nothing that money commands would be affected in a less proportion, with the exception, perhaps, of the labour of the dependent poor, whose wages would probably rise more slowly.

But this is not the way, in which the augmentation of the circulating medium of any country has ever been effected. The additional supplies of it are generally ushered into circulation by slow degrees, mostly without the knowledge of the public, and frequently, even of the parties into whose hands they pass in the first instance; so that the augmentation is seldom thought of, till it becomes perceptible, by the gradual, and we may say, involuntary change in the state of the markets.

Most of the articles, therefore, the value of which was in some measure fixed and steady, before the augmentation of the circulating medium took place, and principally those of which the supply and consumption are nearly regular, will, for a long time, preserve their accustomed prices. The dealers in lead, in tin, in iron, &c., will continue to give and to receive the usual rates for those articles, and go on thus for years without suspecting that they ought to ask, or might obtain more. But, *when an extraordinary demand, or a deficient supply, causes a relative or real scarcity of any one of them, then the price begins to rise, and becomes an object of contention between the holders and the purchasers.* The former will try to obtain as much as they can, and the latter, in their offers, will be necessarily influenced by their increased means of paying. Thus the price alters its standard, and frequently retains the newly

acquired elevation even when the momentary causes, which first made it fluctuate, have ceased to exist.

It is also to be observed, that prices once in motion, never rise and fall, in exact proportion with the cause giving them the first impulse, but *advance*, as it were, *with a momentum of elasticity*, which they inevitably derive from the very constitution of the human mind, and which always occasions them to *vibrate beyond the point in which they finally settle.*

If, therefore, we imagine a number of gentlemen, sitting round an inexhaustible chest of guineas, with the commercial world before them, and with liberty to take out of the chest, as many guineas as they please, provided they pay interest and return them after a certain period, we cannot doubt of their enjoying an immense advantage. Because, before they thrust their hands into the chest, a definite number of guineas having circulated among the public with a definite quantity of commodities, these must have acquired their proportionate prices, at which our imaginary speculators are able to contract for large amounts, parting with their guineas, and thus giving out the new supplies of circulating medium, only in payment for them. They may safely calculate therefore, while securing goods at the *old* prices, and thereby occasioning a great demand, that they will soon acquire *new* ones from the altered proportions between commodities and circulating medium, aided by the additional rapidity of circulation from the greater briskness of trade. They know, moreover, from what I have termed the elasticity of the rise of prices, that they will advance beyond the due proportion; in consequence of which, they are certain on the one hand, to be able to sell off their goods after a little time, with a profit much larger than the amount of the interest they have to pay for the use of the guineas, whilst on the other, the circumstance that the augmentation of circulating medium is unsuspected, and that the prices of commodities are not affected, till an unusual demand causes a contention for price between holders and purchasers, secures to them a field of speculation almost as inexhaustible as their chest. Thus, by apparently speculating on the rise of prices, they in reality will speculate on a depreciating circulating medium, (though we may fairly presume them to be led, on this occasion, more by a mercantile instinct, than by a clear comprehension of the true state of things), and they will remain the sure masters of their fortunes, if they are but careful, aggregately, always to take more out of the chest than they return into it. Pursuing a train of reasoning analogous to this, your lamented father observed justly before the committee, that he knew from ex-

perience that a demand for speculation could only be limited by a want of means.*

Another theoretical point, on which I think it necessary to dwell for a few minutes, is the question, *what constitutes excess of circulating medium?*

It is somewhat surprising that the Bullion committee, whose principal object in their Report seems to have been, to convince parliament, that such an excess now exists in England, should no where have distinctly stated in what it consists, whilst it appears from the interrogatories put to the witnesses, annexed to the report, that the most confused conceptions prevail on the subject.

The idea of the governor and deputy governor of the bank of England, and of those who think in this respect with them, seems to be, that the public can only have occasion for a limited quantity of circulating medium, and that any considerable sum beyond this amount, will immediately lead to embarrassment. They wish to make us believe that if, for instance by mistake, bank notes, to the extent of some millions of pounds, had been applied for and issued over and above the just proportion required, it would immediately cause heaps of them to incumber the portfolios of the owners, who would be totally at a loss what to do with them, and anxiously look out for an opportunity of returning them to the institution from which they came. But can it be seriously imagined that such a thing should ever occur in a commercial country like England? That ever intelligent merchants, whose pursuits at best are a species of rational gambling, should find themselves unable so to invest ready money as to secure a chance of considerable profits?

The fact is, that the amount of circulating medium in the pockets of the nation, and that of commodities in the market, always adapt themselves to each other; that the prices of the day are the result of both, and vary with them; that those who *first start prices* have always on their side the probability that they will be able to sell with a profit; and that difficulty in employing circulating medium, or its total uselessness, can therefore never form a criterion of its excess.

Nor can convertibility into gold and silver, as the committee would have it, form this criterion with regard to paper currency.

1. Because gold and silver themselves may be, and in some countries are, in excess, whilst their quantity is deficient in

* Report of the Bullion Committee, folio edition, minutes p. 133.

others. Millions of them frequently lie idle in the coffers of the merchants of some districts of Spanish America, although in others there is a want of money, and when in Europe, whole countries rich in soil, in industry and produce—such as Austria and Hungary—but by their local situation rather secluded from foreign trade, cannot procure so much of them, as the maximum of their prosperity would require.

2. Because the very nature of the operation of a bank is to cause as much metallic medium of circulation, to leave the country, in which it is established, as its notes replace; so that whenever, from some cause or other, the convertibility is brought to the test—as in England in 1797 in consequence of the alarm of an invasion—the precious metals will be found deficient. Yet the committee themselves will not pretend that, at the period alluded to, there existed an excess of bank notes; whereas it is certain that under different circumstances, viz:—great confidence at home, a flourishing, unembarrassed foreign trade and the balance of payments in favour of England—the bank might probably have doubled their issues without causing a run on them.

Indeed it is useless to seek for a criterion of excess before we know what excess is. From the above mentioned adapting nature of circulating medium, it is obvious, that in a country—like England for instance, considered by herself—a circulating capital of twenty millions of pounds sterling might be found sufficient, and forty or fifty millions would not be found too much. We must not forget that circulating medium altogether is a tool of civilized society, a *contrivance for convenience!* Then if *convenience* is the sole end, *convenience* alone can give the measure of the *too much* or *too little*. Now when the circulating medium is metallic, should it become so plentiful as to make a pair of fowls cost fifty guineas, and a head of cabbage five or six, it would obviously be inconvenient, because it would require more wagons and beasts of burthen to convey the money than the commodity. But when it is paper, *millions* of pounds are not more difficult to carry than *single* ones, nor will it be more embarrassing to mention a price in pounds, and thousands of pounds, than in shillings and pence.

Thus convenience does not point out any definite limits to paper circulation, when a country is viewed by itself, and we are not more fortunate in seeking a precise idea, with regard to what constitutes excess, when we advert to the intercourse with neighboring nations. Because, if in *one* country political troubles, errors in the administration of public affairs, the

desolations of war with its attending miseries, or any other train of unfortunate circumstances, should have caused an extraordinary and oppressive, relative or real scarcity of the precious metals, it would be a singular principle of convenience indeed which should oblige the *other*, voluntarily to derange its prosperous concerns, and to create *similarity* of distress, in order to maintain *sameness* of prices. Nor will the trade between two countries be materially affected, by a respective scarcity or abundance of circulating medium. Foreign trade is the exchange of commodities between two nations in which circulating medium, unless it forms, as metallic wealth, a staple export of one of them, comes only into operation for the settlement of balances. These can never, for any length of time, amount to considerable sums, because generally, no nation imports more than it can pay for with its exports. But so long as a given quantity, for instance, of hemp in Russia, will favourably exchange for a given quantity of British goods,—that is, so long as the goods received in return shall be worth in Russia as much, or rather more, than the hemp, in exchange for which they were procured, so long will that exchange take place, should even the market value of those articles be as many paper pounds in England, as metallic rubles in Russia.

When therefore, as in the present inquiry, the question relates to a paper medium of circulation, the quantity of such medium, and the consequent high or low nominal price of commodities is, in itself, absolutely immaterial, with regard to convenience. Since, however, prosperity in our state of civilization and trade depends on industry, and industry on security in its broadest sense—on security not only of person, of property, but also of calculation—it is of the utmost importance that extraordinary and general changes of prices, such as arise, not from occasional and natural variations in demand and supply, with regard to one or another commodity, but from a sudden and considerable diminution or increase of circulating medium, should be as much as possible avoided. No change should be suffered which would materially affect the debtors or creditors of former years, and consequently deter the active men of the day from contracting engagements, or exercising their means. This should be attended to; not only from principles of justice, but also from motives of convenience and policy; because such revolutions in nominal value baffle all rational calculations, impair security, destroy industry, and thus undermine the very foundation of national power and wealth.

It appears therefore, in whatever manner we view the subject, we can obtain no other result than this—that excess of

circulating medium is a considerably greater, and deficiency of circulating medium a considerably less quantity of it, than that to which a nation, whose population and business have undergone no material change, has been previously and prosperously accustomed.

Of the two evils, however, the least important, it must be observed, is an amount of circulating medium rather deficient, because it affects the more active part of the nation, who always will be able, by ingenious contrivances for economizing the use of circulating medium, and by other means, to relieve themselves; whilst excess of it bears without remedy or mercy, on such as are comparatively helpless,—on persons of fixed and moderate incomes, arising from salaries or property invested in public securities; on creditors of long standing; on the aged and infirm; on orphans and widows; and generally, on people possessed of a small sufficiency, often the late result of long and meritorious exertions.

I shall now proceed to make some remarks concerning the report of the Bullion committee, and the present situation of England with regard to her currency.

The committee, and particularly Mr. *Huskisson* in his very able defence of their report,* seem to have been too much attached to the idea that gold, having once in England become by law the standard of value, ought to be considered itself as *unchangeable* in value. I admit that it may be convenient so to consider it in all common cases, for the sake of uniformity of language and proceedings. Since we have always to compare values, and the great object is, to express ourselves with precision, and to be understood, we must agree on some object, in reference to which, all other things, when fluctuating in value, shall be considered as dearer or cheaper than they were before. The law in England has fixed on gold for this purpose. In the eye of the law, therefore, every thing that can be bought for less gold than before, has become cheaper, has depreciated; and, since that is the case with bank notes at present, bank notes must have depreciated of course.

But we must not forget that the law in this repect can only settle our language, which is necessary for the purposes of justice, and perfectly sufficient for the ordinary concerns of society. When extraordinary questions occur, like the present, we should lose sight of the law, and recur to first principles, and to the nature of things.

* The Question concerning the depreciation of our currency stated and examined by W. Huskisson esq., M. P. 4th edition.

We measure masses by weights, and extension by rules, though we know that the influence of temperature, elevation, moisture &c., on our weights and rules, must necessarily make our admeasurements mathematically incorrect. The inaccuracies arising from it, being practically of no consequence, the law considers as out of the question; but, if from some revolution in the physical world, the substances we make use of for weights and measures, became more strongly and irregularly affected by the above mentioned causes than heretofore, would not justice require an amendment of the law regulating these matters?

Your *Mr. Davy* discovered that potash and soda are metals. Suppose that by some further ingenious investigation, he should discover, that certain common descriptions of clay or ponderous earth, are gold in disguise, easily convertible into the metallic form; and if, in consequence of it, every one could procure as much gold as he pleased, would it still be justice to execute contracts, where payments in gold, the only legal standard, are stipulated, agreeably to the letter of the law? Ought we still to consider its value as unchangeable though other objects might become dearer or cheaper in reference to it?

The truth is, that philosophically speaking—and we should speak philosophically on a question like that under consideration—nothing that possesses any value at all, is *steady* in its commercial value; for this value, which practically absorbs and supersedes any that may be called intrinsic, invariably arises from demand and supply, both of which must be liable to be variously affected by circumstances. The precious metals, for reasons sufficiently obvious, may not be subject to fluctuations of value so great as those of most other commodities, but that their value should be unchangeable is the more impossible, as they have very marked qualities of their own, which must make their possession in some instances, much more desirable, than in others.

Whenever, therefore, the question occurs to determine,—not merely for the purposes of convenience and mutual understanding, but with accuracy,—which of two objects, whose relative value we find changed, has depreciated and which improved, it can only be decided, by a careful consideration, of the principles of value as applied to them, and by a reference to the rates at which they exchange, for a variety of commodities of steady home production, and general use. By this means we may form a pretty accurate, though we never can form a precise idea, on the subject. Precision in this instance

must be always out of the question, because value, being something relative in itself, an unchangeable standard of value, by a comparison with which precision would be alone attainable, is in fact an absurdity.

The correctness of these observations is so obvious that to make them at all may appear useless. Yet, from the force of habit, they have been repeatedly lost sight of, in the arguments of the parties contending for, or against the depreciation of the British currency.

All the arguments of Mr. Huskisson to establish the depreciation, prove either that gold has risen, or that bank notes have depreciated, or that both, has taken place. He shows only that their value is no longer the same, and tries to establish *his point*,—the actual depreciation of the paper,—by taking it for granted that the value of gold cannot change, because the law makes it the standard. He forgets that the law cannot make value; that at most it can regulate language.

Any attempt to change the denomination of guineas or their weight and fineness is reprobated by the same author. He considers it tantamount to fraud.* Yet this fraud would be strict justice, if there really existed a considerable change in their commercial value. If Mr. Davy should make the discovery mentioned above, would it not be fraudulent in the extreme, to adhere to the letter of contracts stipulating for valuable considerations, the payment of a given quantity of gold? The impression on Mr. Huskisson's mind, that the value of gold is unchangeable, betrays itself through all his reasonings, though he says in another part of his work "the value "of the precious metals relatively to other commodities *cannot* "be fixed. It is subject to be affected by the same circum-"stances of abundance, scarcity, supply or demand, as affect "the value of all other things &c."† He seems therefore to admit two values; the one relative and changeable, the other ideal, law-created, fixed. But the latter is either a misconception, or the whole dispute turns on language, and then the question may be, whether the advantage of preserving uniformity of language, will be worth the inconvenience and distress, at the expense of which, in certain situations, it is alone attainable.

"The price of commodities generally," says Mr. *Hill*, his opponent,‡ "has nearly doubled since 1760, but the price of

* The Question, &c., p. 18. † *Ibid.* p. 86.

‡ An Inquiry into the causes of the present high price of gold bullion in England, by John Hill, p. 87.

"bullion has been so far from partaking of this general ad-"vance that from 1760 to 1795 it continued almost exactly sta-"tionary," &c. Every thing had risen nearly 100 per cent., yet gold was not cheaper! One bushel of wheat would buy as much gold as two formerly—yet the price of gold was the same!! Mr. Hill only shows that while gold and bank notes remained by law exchangeable for each other, they were never much at variance, but rose or fell together; and this nobody will dispute.

Admitted then, as it seems to be by all parties, that a one-pound bank note commands at present only seventeen shillings sterling in gold, the question whether bank notes have depreciated, or whether the value of gold has increased, can only be settled with some degree of certainty, by totally discarding the idea of any unchangeable measure or standard of value; by carefully examining how they are probably affected by the circumstances, on which commercial value alone depends; and finally by ascertaining at what rates they formerly exchanged, and now exchange, for a variety of articles, the value of which, on general grounds, is most likely not to be subject to much variation.

But the two circumstances on which commercial value exclusively depends are, *supply* and *demand.*

The supply of gold, according to the evidence before the committee, does not seem to have varied much of late years.*

Then if its value has at all increased, it must be owing to an increased demand.

The demand for gold is *partly* for manufacturing purposes. This is the least considerable. It amounts in England only to about 24,000 ounces per annum,† and probably to but little more in the rest of Europe; nor can it be presumed recently to have undergone much change.

And *partly* for the purposes of circulating medium, of treasure.

Now a given amount of business in a community requires more or less circulating medium, in proportion to the prevailing degree of confidence and security. If the latter are great, credit, in its various shapes, will go far to supply its place; if they are low, almost every transaction must be settled with cash.

Again, a less quantity of money will be sufficient for a given amount of business, if the circulation be rapid, than if

* Report, p. 4, and Minutes, p. 52. Huskisson, the Question, &c. p. 43

† Minutes, p. 50.

it be slow. A small sum, changing hands frequently, may settle many accounts, or, through the agency of bankers, may be rendered adequate to the consummation of a vast many contracts without more than one real transfer; but in proportion as longer intervals occur between sales and purchases, and money lingers, much larger sums are required even for smaller concerns.

Again: Confidence and security not only occasion a remarkable saving of money, by causing credit, in a great measure, to supply its place, but they will also cause the whole of it to be maintained in circulation, because every holder of money, under little apprehension of losing, and the more anxious to increase his property, will lay it out in some way or other; but under reversed circumstances, he will be disposed to lock it up.

Again: Whenever trade is forced out of its accustomed channels; when new markets require new connexions; circuitous supplies, a multiplicity of agents; when an unsettled, always varying state of things occasions a constantly changing intercourse between persons previously, perhaps, not even known to each other, much less inured to habits of mutual trust and reliance; and consequently when the facilities, arising from drafts and redrafts between long established and connected houses, customary in all commercial countries, and a means to make their credit answer the purposes of cash, are out of question; most undoubtedly an infinitely greater quantity of ready money will then be wanted, than in regular times, to compass even a contracted amount of business.

Viewing the situation of Europe with these observations before us,—credit and confidence, unless in England, every where destroyed; circulation more interrupted than it has been within man's recollection; hardly any visible property secure from rapacity and violence; all customary channels of vent and supply deranged; two of the principal emporiums of the continent commercially annihilated; a whole opulent, trading republic overthrown, and barracks and military rule established in the place of warehouses and mercantile usage—can it be for one moment doubted that the demand for the precious metals must be great in the extreme?

The committee themselves have been perfectly sensible of these truths, though they have not applied them to the question, of an increased demand for gold. They say* "a much "smaller amount of currency is required in a high state of

* Report, p. 26.

"public credit than when alarms make individuals call in their "advances and provide against accidents by hoarding; and in "a period of commercial security and private confidence than "when mutual distrust discourages pecuniary arrangements "for a distant time. But above all, the same amount of cur- "rency will be more or less adequate in proportion to the "skill which the great money dealers possess in managing "and economizing the use of circulating medium."

It appears, moreover, from their report that they are convinced the great demand for gold and consequent run on the bank in 1797, which rendered the restriction act an indispensable measure, arose from the then prevailing apprehension of an invasion. If the mere apprehension produced such effects, what would have been the result of an actual irruption of foreign troops, and of an overthrow of the government and institutions of the country, such as has taken place in Hamburg and Holland?

It is also remarkable that the first considerable rise of the market price of gold in England took place, when the French troops first took possession of the north of Germany.

How then in the face of all this can the committee and their advocates maintain, that there has been no unusual demand for gold on the continent of Europe?

Having learnt from the evidence of Mr. Greffulhe, Abraham Goldsmid,* Merle &c., that the price of gold bullion on the continent had advanced only from 3 to 4 per cent., they say—"Here your committee must observe that both at Ham- "burg and Amsterdam, where the measure of value is silver, "an unusual demand for gold would affect its money price, "that is, its price in silver—and as there has not been any "considerable rise in the price of gold, as valued in silver, at "those places in the last year, the inference is, that there was "not any considerable increase in the demand for gold."†

In a similar manner Mr. Huskisson, to show that there can have been no unusual demand for gold, dwells through four pages‡ on its steady value in exchange for silver.

Yet what would the committee think of a man who, during the period of a scarcity of grain, arising from a general failure of crops, or, if you please, from the prevalence of an extraordinary epidemic in which death could only be averted by a double consumption of the usual quantity of farinaceous food, should reason for instance in this way:—At all times one bushel of wheat has exchanged for two bushels of rye. I can

* Minutes, p. 91. † Report, p. 3. ‡ The Question &c., p. 43 to 47.

still obtain one bushel of wheat for two bushels of rye; consequently, the inference is, that there exists no unusual demand for wheat, and that the idea of its scarcity is a mere conceit!—Is their own argument any better?

Silver and gold, possessing as precious metals nearly the same practically important qualities,—durability and great value in a small compass,—with the difference only that gold possesses them rather in a greater degree—nothing is more natural than that they should be influenced nearly equally by the same circumstances, and it cannot therefore be wondered at, that their relative value should have undergone very little change. We are likewise told by the committee, "It is important to observe that the rise of the market price of silver "in this country, which has nearly corresponded to that of "the market price of gold, cannot in any degree be ascribed "to a scarcity of silver. The importations of silver have of "late years been unusually large, while the usual drain for "India and China has been stopped."* But to infer from this that no extraordinary demand for, and consequent relative scarcity of either has taken place on the continent of Europe, is a mode of reasoning which would justly surprise us in men of their sagacity, were instances of habitual misconception, when price and value are concerned, less common than they are.

Bonaparte boasts that he has in his private chest at the Thuilleries two hundred millions livres (nearly ten millions of pounds sterling) in gold and silver. His policy in this respect is that of the times. The insecurity which he feels spreads insecurity over the world within his reach, and prompted by the same motives with himself, kings and princes, and dignitaries and generals, if they are possessed of any prudence, with all the provident men of all ranks of society besides, will, like himself try to hoard treasure.

So far then as we can depend on a careful application of the principles of commercial value to the case under consideration, we are justified in the opinion that, with a demand for the precious metals on the continent of Europe necessarily much greater than usual, whilst the supplies have comparatively remained stationary, their value must have much increased.

To ascertain whether *practical experience* sustains this conclusion, we must direct our attention to commodities of which the supply is the most extensive and constant, and the con-

* Report, p. 4.

sumption and demand the most regular and uniform, and of which therefore the value, independently of that of the circulating medium for which they exchange, may be considered as the most steady. By adverting to these, though we cannot discover the truth with accuracy, we may nevertheless obtain a corroboration of the inferences drawn from theoretical reasoning.

The necessaries of life, such as the various kinds of small grain, the several descriptions of meat, hay, bread, potatoes, firewood, and coal, the common metals, if produced in the country, house rent and the common beverage of the people, are objects of this nature. The prices of these, *now* and at periods not long past, in the same districts, with proper allowances for abundant or deficient crops, and other leading circumstances, should be examined, and application made, of the general result, to the subject of this inquiry.

It is to be regretted that the committee should not have thought it necessary to procure detailed and accurate information on these points, which certainly would have been of importance to the object of their investigation. To supply this defect, in the country where I write, is, from the interrupted and precarious communication with the continent of Europe, impossible. I learn however from an intelligent traveller, lately returned from the north of Europe, that bread, at Hamburg, is reduced to half its customary price; that rye, instead of one hundred rix dollars the *last*, sells from thirty to thirty-five; that in Holstein real estate can be purchased at one third of its usual value; and I have no doubt that the same observations would hold good in all the north of Germany, in Holland, and in most of the frontier departments of France.

They become the more forcible when we reflect that war invariably withdraws labouring hands from agriculture, and causes great waste of provisions and destruction of growing produce, from which, regularly, there must result a diminution of supply, an increase of demand, and consequently a rise of prices, as was actually the case in most of the continental wars at former periods—unless where they lasted so long and became so destructive, that insecurity and alarm augmented the value of the precious metals more rapidly, than that of the necessaries of life,—and in the present war till within the last eight or ten years!

If therefore, the prices of the enumerated commodities should even be found to have undergone little alteration, it still would prove that the commercial value of the circulating medium—which, on the continent, is confined to the precious

metals, must have advanced much; and if they should be found much lower than formerly, the inference that the advance in value of the precious metals must have been very great, would be still more irresistible and decisive.

But if gold has risen, as well as silver, on the continent of Europe, it must have risen in England the more unquestionably, since its introduction on the continent from England, may be said to have been attended with no difficulty, compared with the almost insurmountable obstacles which attended the introduction of every other commodity. In fact, the latter circumstance is in itself of so much consequence, that it must invalidate all the arguments of Mr. Huskisson, respecting the manner in which balances of trade are generally adjusted, when applied to the present times.* As England has wanted and obtained from the continent a variety of articles of first necessity, for which she was not suffered to make payment otherwise than in the precious metals; as a considerable annual amount of interest was likewise to be remitted to holders of British funds on the continent; as it is highly probable that the alarm spread there, by innumerable presses under French influence, respecting the stability of the prosperity of Great Britain, must have made many individuals anxious to withdraw from thence, though with loss, their capitals invested in public funds or otherwise,—capitals to the amount, we are told, of upwards of fifteen millions pounds sterling; and as government must frequently have had occasion for the exportation of heavy sums in hard money; we could not be surprised at an increased demand for gold in England, and a consequent rise of its value, even if it had experienced no considerable change in this respect on the continent. But, if the last mentioned circumstances operated in addition to its augmenting value there, *we can only wonder that it has not risen more;* which it certainly will do if no alteration takes place in the general state of the affairs of Great Britain.

Believing then from all the reasons adduced, that gold has risen on the continent of Europe as well as in England, the further question occurs, whether the *whole difference* between the nominal value of bank notes, and the market price of gold bullion, is to be attributed to this cause; or whether bank notes may not have depreciated on the one hand, while bullion has risen on the other, so as to make this difference chargeable in part to both circumstances?

* The Question, &c., p. 51 to 54.

The value of bank paper, like that of all other commodities, —for a commodity it is at all times, and particularly when no longer convertible into guineas,—must depend on demand and supply.

As the latter, according to the rules of the bank, is regulated by the former,* and as excess of bank paper, according to the result of our inquiries above, consists in the circulation of a larger quantity of it than that to which the nation, while its population and business experience no material alteration, has been previously and prosperously accustomed; we should at first suppose that no excess ever can take place, because the nation, when finding itself comfortable with a certain amount of it, will have no inducement to press for additional issues. But it is necessary to distinguish between the demands of the public at large, and those of the immediate applicants, the customers of the bank, whose situation in this respect, is widely different.

In order to make this subject, which I deem important, the more clear, it will be necessary to begin with examining minutely the operations of the rules, by which the bank have professed themselves to be guided in their discounts, that is,—in the issue of their notes. These rules are,

1. Never to make advances except on unexceptionable security.
2. Never for a longer term than ninety days.
3. Never at a lower charge than the customary interest of five per cent:—

And by cautiously adhering to them, the bank are of opinion, that an over issue of their notes is impossible.

I believe this opinion to be erroneous, and the committee were aware of its fallacy; but it appears to me that they, and in particular Mr. Huskisson, in commenting on the arguments of the bank with regard to this point, have neither done complete justice to the bank nor to their task. Mr. Huskisson† has even altogether omitted mentioning the third rule, on which the strength of those arguments, if any they have, principally depends and the insufficiency of which, as a check against excessive applications, it became therefore particularly interesting to develop.

The first rule, to make advances only on good security; or, what amounts to the same, to discount only unexceptionable

* See the Examination of the governor and deputy governor of the bank and of Mr. Harman, one of the directors, in the minutes attached to the report of the bullion committee.

† The Question, p. 29.

paper, has hardly any thing in it restrictive as to extent of issues; for certainly, if all the paper of responsible people in Great Britain, even if all their paper arising from *real* transactions, were to be discounted, the country would probably be inundated with bank notes, though it is well known that to distinguish *fictitious* from real paper, is often impossible. Nor indeed is this distinction of as much consequence as has been often imagined, particularly where a repeated transfer of the same property causes a multiplication of *real* paper, without a corresponding multiplication of security.

The second rule—to discount only for a period not exceeding ninety days,—gives additional force to the first; because the directors will be less liable to overrate the solidity of applicants for discounts for a short period of time, than for a long one, which would naturally bring them within the scope of a greater variety of adverse chances. But it can hardly be considered as imposing much restraint on the board as to *extent* of issues, for even the discounting of all unexceptionable bills at sixty and ninety days, might imply an issue of bank notes much beyond the real wants of the public.

The third rule then alone seems to impose a real check; not it is true, on the board, but, what will answer the same purpose, on the applicants for bank notes themselves. Solid and prudent people, say the bank, will not pay the discount of five per cent. for the use of bank notes unless their use is worth it. But as long as their use is worth the discount, which is the regular price of money, there can be no more of them in circulation than the exigencies of the public require whatever that amount may be.

This argument is particularly dwelt upon by Mr. Hill.* "The precious metals," he says, "being possessed of intrinsic "value can always be *forced* into circulation. Paper currency, "on the other hand, having no intrinsic value, cannot be "forced into circulation. There must exist some adequate "cause in the pecuniary transactions of mankind to bring it "at first into existence, and after it has been created, its per-"manency will depend on the permanent continuance of those "circumstances to which it owed its origin. While men find "it to conduce to their convenience and advantage, they will "promote and encourage its circulation, but when it ceases to "recommend itself by real utility to society *it will become ex-"tinct of itself.*"

* An Inquiry into the causes of the present high price of gold bullion in England, &c. page 73.

And again, "but paper currency can be circulated no longer "than the public at large find it worth while to pay interest for "the use of it to those by whom it is issued; and an interest, on "my principle fully adequate to the general use of money."*

He further observes, "I have endeavored to show that this "paper, being continually chargeable with interest, will be "borrowed of the bankers no longer than the trade of the "country enables the borrowers, to employ it in such a way, "as is productive of profit adequate to the interest and a mer- "cantile remuneration besides to the traders."

He quotes also the words of the late governor of the bank, Mr. Whitmore, viz. "the amount of issues of bank paper is of "necessity limited by the real wants of circulation, as no one "will pay interest for a bank note that he does not want to "make use of."†

He concludes by saying, "let the Bullion committee con- "vince the merchants and bankers of London, that the many "millions they are continually borrowing are unnecessary for "the circulation of the kingdom, and that the interest which "they pay for them may very properly be saved, and within "three months we shall find every note of the bank of Eng- "land disappear from circulation, and return to the coffers of "the bank."

Mr. John Pearce mentioned before the committee, "that, "from the manner in which the issue of bank paper is con- "trolled, the public will never call for more than is absolutely "necessary for their wants."‡

And Mr. Whitmore, being asked by the committee, "if the "amount of bank of England notes were in any way to be in- "creased one half, that is from twenty to thirty millions, can "it be supposed that the purposes for which it is required "would be increased in the same proportion?"—Replied, "the "surplus quantity, not being wanted, would immediately revert "to us."§

It appears therefore that from the times of the celebrated *Law*, who also thought that, because the notes of his bank were issued for interest they could never be in excess, down to the present period, the same idea has prevailed, that the interest to be paid on receiving bank notes in exchange of bills, controlled the applications for them:—an idea, which has certainly been productive of much mischief.

The committee observe with regard to this doctrine that it is a very fallacious one. "The fallacy upon which it is found-

* An Inquiry, &c. p. 74. † Report—Minutes, p. 97. ‡ *Ib.* p. 112. § *Ib.* p. 121.

"ed, say they, "lies in not distinguishing between *an advance* "*of capital to merchants*, (which they would always deem "beneficial) and an additional supply of currency to the "general mass of circulating medium."*

But it is difficult to understand this distinction. The loan to the merchants, becomes an addition to the circulating medium, from the moment it is made. It is, *so much power to make purchases*, as the committee terms it, placed in the hands of the merchants, and it conveys so much power to the hands of every subsequent receiver, and that much, and no more. It never changes character. If granting the loan and furnishing that power is wrong, it is so from the first instance. All the reasoning of the Committee on this point is unsatisfactory. The Bank say, if there is a redundancy of bank notes among the merchants and the public generally, people will not know what to do with them, will be at a loss how to earn even legal interest by their use. Whenever therefore they thus accumulate, they will be employed in extinguishing loans in order to save interest, or, if the holder owes nothing himself to the bank, they will find an advantageous exchange, in mercantile transactions, with persons who *do owe* to the bank, and for whom the notes, therefore, will be at least worth five per cent. which, by cancelling their debt, they save, when they were not worth so much to the former holder. Therefore the redundancy will always correct itself when it comes to this point. For as long as money will readily earn five per cent. and upward for the holder, there is, in their opinion, no excess of it. —This argument appears correct, and if it is fallacious, at least the committee have said nothing by which that fallacy could be *tested*. Their own ideas on this point were not *precise* and *clear*, which has caused them to fail in producing conviction with those who differed with them in opinion.

The argument of the bank against the possibility of an over issue of their paper, while they discount only the bills of solid and prudent people, and only such as expire within ninety days, and charge legal interest for the advance, admits of being stated in terms still more plain and forcible. They consider, and justly, the interest which they deduct from the amount of the bills discounted, as the *hire* paid by the holder for the use of the principal, and this hire so far resembles the *rent* paid for houses and land.

Would it not be extraordinary then to pretend that there are too many houses built as long as every house, as soon as finished, finds an occupant, who takes it at the usual rent, pays that

* Report, p. 23.

rent punctually, and is glad, on these terms, to be permitted to retain possession?

Would it not be equally extraordinary to pretend, that there is too much land under cultivation, while substantial farmers press forward in competition, as to who shall be favoured with the lease, on the accustomed terms, of any vacant tract?

And is it less so to say there is an excess of bank notes, when solid and unexceptionable men continue anxious to take them at the *usual hire?*

If this argument were as just as it is specious, it would be *conclusive*, because, though the *check of hire* cannot be expected to operate with regard to advances of bank notes made to government, as it does with those made to individuals, since the object of government is not *gain*, nor comes at all into operation when the bank issues notes in making purchase of bullion or other property; yet, as their notes, however issued, will circulate, the application of individuals, *seeking gain*, for more *on hire*, could only continue as long as no redundancy, preventing useful employment, rendered that gain unattainable.

But the argument is defective. It would be *less* so if bank notes continued to be convertible into gold, as they were previously to the restriction act of 1797. The rules of the board were sufficiently perfect at the time they were framed, and answered, as I shall presently show, their purpose under the circumstances then existing; but they required a modification when the restriction act had passed, of which those presiding over the institution, from not fully comprehending the subject, have not been aware.

There can be no doubt that the rent, asked for a house or farm, and agreed to by the tenant, and regularly discharged by him, determines the usefulness, the practical value of both, because it is stipulated *in something that has a value independent of either, a value in its own separate right* as it were; it is stipulated in *money*, in the circulating medium of the country, whether paper or coin.

In the same way, if a man had discovered multiplying crucibles, in which, by the application of certain chemical agents, he could so treat gold as to obtain one hundred and fifteen ounces at the end of twelve months, for every hundred put in, of equal fineness, and without further labor or expense than his own occasional attendance; and if, being without cash though otherwise safe and responsible, he should think fit to make use of his credit, and borrow gold, agreeing to pay three barrels of flour annually for every hundred guineas lent him; he might in this case be suffered to borrow as much as he

pleased, and to operate on any scale he might think suitable to his convenience, because the *rent*, payable in something *not* gold, in *flour*, would naturally *check* his operations and confine them within certain bounds. As soon as from the increased plenty of gold, flour should have risen considerably above its usual value, presumed to have been at first about equal to five guineas for three barrels, he must relinquish, or, at least, contract his business, because it would no longer be profitable. The *amount of the hire* in this case would be *a sure criterion of the value of the thing*.

But, if instead of this, he had stipulated to pay five guineas, or the same amount in gold of standard fineness, for every hundred guineas lent him; it is obvious that the hire, being only a fractional part of the thing borrowed itself, would no longer operate as a *check* on his multiplying process, nor serve as a *test* whereby to judge of the value of the principal; but that he might go on, till gold had become as common as copper or lead; that he would always make his ten per cent. by the pursuit, and that, if the sum of his earnings, arising from this profit of ten per cent. should in consequence of the gradual depreciation of gold, no longer command the same amount of commodities as when he began, he would only have to enlarge the scale of his business, in order to derive from it the same emolument. Thus, nothing could prevent him from realizing an immense fortune, particularly if he had the good sense opportunely to turn his gold into real estate, to the certain eventual ruin of all persons deriving their income from any species of permanent contract.

The situation of the customers of the bank in some respects resembles that of this adept. The discount of five per cent. which they pay; the hire, the consideration yielded to the bank for converting in their crucibles an inexhaustible stock of securities into circulating medium, is a fractional part only of that circulating medium itself which the bank issues. They may therefore take it on those terms with perfect safety, because the commercial value of the hire they pay, cannot fail to be in exact proportion, with that of the principal they receive. Bank paper might depreciate from excess of issues till the commercial value of the pounds of the day were equal to that of the shillings of former times, and still applicants would not be wanting, to take it at five per cent., because their nominal pounds of interest, would likewise in reality, or rather in comparison with former times, be only shillings. Consequently the discount which they pay, though in every other respect similar to hire, yet having no independent value of its own,

cannot be considered, either as a *check* on application, or as a *test* of the value of the principal.

Too much stress has been laid by the champions of the opposite opinion on the pretended uselessness of bank notes, when the circulation is what they term full. In dwelling on this point, they ingeniously, or, I rather think, inadvertently, take for granted, what is to be proved; viz. the undiminished commercial value of bank paper. Suppose on a named day, the commercial transactions of the metropolis *given*, and the commercial value of bank paper, or, what is the same, the *prices* in bank paper of the various property to be transferred also *given*, then, certainly, only a *limited* amount of bank paper could be employed that day; and further, supposing the daily average of business in the metropolis to remain about the same, then, *as long as prices likewise remained the same*, no greater amount of bank paper could be daily employed. It is obvious however that if things on a subsequent day were to cost as many pounds as they cost shillings before, it would require twenty times as much bank paper to complete the same number of transactions. The argument, therefore, drawn from the *pretended fulness of circulation*, if we already take it for granted that paper has not depreciated, is useless. But, if we question its undepreciated value, it means nothing; because its very conclusiveness rests on the *unaltered prices of commodities*, which is the same with undepreciated value of circulating medium. It is not so much the extent of business, which regulates the amount of bank notes wanted—because the expedients contrived in order to economize them are numerous—as the amount of the notes of which all that can be had, will be used—that regulates the prices of things.

It must therefore be clear to every comprehension that the customers of the bank have all the advantages of the gentlemen sitting round the inexhaustible chest of guineas, mentioned in the beginning of this letter. The bank being *confessedly* liberal in proportion to the urgency of applications, their customers are sure of commanding a constant increase of circulating medium; and, being those into whose hands the additional supplies of it pass in the first instance, without its being suspected by the public, they have it constantly in their power to make purchases at prices which *they* know, from a *tact* acquired by experience, will advance, and, which *we* know, must advance, in consequence of that depreciation of the currency of which they themselves may be considered as the active, though unintentional, instruments.

The measure of their profits is the extent of the bank's

compliance with their applications, and this again depends on the eagerness with which they press them. Thus if the bank could be induced to double their usual issues, their customers might safely agree to pay a discount of ten, of fifteen per cent. and upwards, because the property, in payment for which they would gradually and silently send forth this inundation of bank notes, could not fail to improve, while in their hands, from fifty to a hundred per cent.; and they would afterwards, in order to consolidate their gains, have only to invest them in real estate, or some other imperishable commodity, the market value of which, from its not yet having become an object of contention, should have deviated little from the old standard. The charge, therefore, of an interest of five per cent., nay of an interest much higher, will not restrain applications for loans, provided they are encouragingly successful. The cupidity for additional supplies of circulating medium, must increase in proportion to the promptness with which it is gratified. The more is obtained, the more will be wanted, because the more it will become, to the first receivers, advantageous and desirable.

To show this still more fully, let us suppose A to be a speculating capitalist, standing high at the bank, and having, consequently, a great command of discounts. B a West-India merchant. C a grocer, and the rest of the alphabet manufacturers, tradesmen, labourers &c., employed by the former, and among each other.

Now A, wishing to turn his power of commanding circulating medium to account, and having observed that the prices of sugar and coffee are rather on the advance; having also learnt that B has just received a cargo of each, and not discovering any other object of speculation more tempting, begins to fix his attention on these two articles. In the meanwhile C, the grocer, has been with B and offered him the late wholesale market price, but B, whom the facility of obtaining bank accommodations exempts from the necessity of making an immediate sale, and who naturally wishes to gain as much as he can, asks ten per cent. more, which C, the grocer, who understands his business, having still a stock on hand, and perceiving no unusual difference between the demand and supply, between his retail consumption and the amount of importations, refuses to give, because he thinks, and correctly, that under these circumstances the above mentioned articles ought not to become dearer.

A, having made up his mind to buy the sugar and coffee, and finding the merchant firmly insisting on his price, at last

agrees to give it. He does so because he is a speculator and a merchant. He cannot leave his means unemployed. Incurring risks belongs to his pursuit, and he will rather expose himself, particularly if he has been generally successful, to the chance of suffering some loss, than remain inactive.

C, the grocer, hearing of this purchase, takes the alarm. Sugar and coffee he says have taken a start. A is an intelligent, well informed man. He must have his reasons. He is, besides, rich and can hold.—While C is making these reflections his stock is diminishing. Experience has taught him that if once an article begins to advance, it generally keeps rising for some time. He begins therefore to think that he might injure his interest in delaying much longer to supply himself. He calls on A, and finding that he will be satisfied with a moderate advance, repurchases of him the sugar and coffee.

C then raises the retail prices of both articles, and his customers, finding that they are obliged to pay dearer than formerly for the luxuries, with the use of which they do not like to dispense, and that the demand for their work is sufficiently brisk, make a small advance in the price of the latter. Even the day labourers begin to say that, since sugar and coffee—if they consume any—have become so dear, their wages ought to be a little higher, to which representation A, and B, and C, and the tradesmen are rather disposed to yield, because they can afford it, the former having done well with their West-India produce, and the latter obtaining good prices for their respective work.

When B receives another cargo, A, his hands always full of bank notes, having had no reason to regret his former purchase, and seeing that sugar and coffee are still looking up, whilst in reality bank notes are looking down, will proceed in the same manner, and purchase it, and his conduct will be further productive of the same consequences.

But as each of the above mentioned letters may stand for all persons of similar pursuits, and thus the whole alphabet represent the nation, it is obvious that by little and little, the prices of all things will advance, and since we have presumed the consumption and supply of the various commodities to remain all this time nearly the same, it will be the depreciation of the circulating medium, and not the scarcity of goods, which causes the augmentation of prices.

From all I have said on this subject it then appears irresistibly to follow, that none of the rules of the bank—neither their confining discounts to bills arising from real transactions, and

their term of advances to ninety days, nor their charge of five per cent.—have any thing in them restraining an excessive demand for bank notes on the part of the usual applicants, or an excessive supply on the part of the board; and that the idea of a redundancy and subsequent uselessness of bank notes, on account of the pretended fulness of circulation, is by no means well founded.

It is also particularly deserving of attention that *convertibility of bank paper into gold and silver*, does not necessarily limit the issues of that paper, and prevent excess, (if excess is—what we deem it to be—a larger quantity in circulation, without a change of situation requiring it—than that to which a nation has been previously and prosperously accustomed,)—because, as it is clear from the preceding detail, that the most active, money-turning part of the community, can never experience any inconvenience from an augmenting circulating medium, the bank—whatever may be their issues of paper—will only be called upon for gold and silver when these, as commodities, find an advantageous market abroad, or, as imperishable treasure, are, during the prevalence of alarm and danger, sought for at home. The circumstances here supposed do not necessarily depend on an increased quantity of paper currency, but on the other hand, may occur—when in times, like the present, a general affliction of the human race over a whole continent, gives to the precious metals an extraordinary value—even *without there existing any excess of currency whatever.*

It is true, while convertibility continues, the commercial value of notes and coin will necessarily remain the same; sometimes the coin will lift up the paper, and sometimes the paper will depress the coin. But in this case the nation, in the event of certain contingencies, will remain exposed to the alternative, in which England was placed in 1797—of being obliged, either to relinquish convertibility, or else *so* to reduce her currency as to become a voluntary partaker in the miseries of her neighbours; thus giving to her enemy the advantage of being able to subdue her as it were, in his own dominions;—to plunge her, to a certain extent, into all the calamities attending conquest, without landing a single man on her coast. From *these considerations it seems to follow, that a currency, entirely unconnected with the precious metals, peculiar to the country in which it should be established, and confinable within certain limits, would be an important improvement in political economy.*

But, to return to our subject. Since we have found that

none of the rules of the bank are adequate to control either application or issue, it would be very extraordinary indeed, if issues, in some degree excessive, and a consequent depreciation of bank paper—that is a reduction of its value rather below the former rate—should not actually have taken place. It becomes the more probable that it has, when we reflect, that the numerical amount of bank notes in circulation, has increased from eleven to twenty-three millions. And since the quantity of country paper in circulation is stated to be about equal to that of the bank of England, and to have increased in nearly the same proportion, it would make an aggregate augmentation of paper currency in England, of about twenty-four millions pounds sterling, whilst the guineas, which have disappeared, and which the additional paper has replaced, can hardly be computed to exceed sixteen millions, so that the general increase of circulating medium cannot well be estimated at less than *eight millions pounds sterling*, or about *one fifth* beyond its amount, previously to the passing of the restriction act. This is also corroborated by the observation of a general advance of the prices, of almost all descriptions of property: which however must in part be attributed to increased taxation!

Considering the insufficiency of the rules of the bank to prevent excessive issues, we have certainly more reason to wonder that the depreciation has been so small, than to be surprised that there has been any. And to account for its being so small we should recollect, that while one description of people have an interest to advance prices, there is always another whose interest it is to keep them down, and that, in consequence of this opposition, they may, for a considerable period, remain stationary, and the circulating medium preserve its customary commercial value, though it exist in quantity sufficient to depreciate, should the equilibrium of opposition, from a change of circumstances, be broken. We should also observe that the bank, secretly guided by habit and experience, have not implicitly followed their rules, nor sought perfect safety in perfect consistency; but, on the contrary, have in a great measure resisted the applications which were constantly made to them for additional issues.*

However, it is not of so much importance to ascertain, the precise degree of depreciation of the currency which has taken place already, as it is to show, that no check exists, on

* Report, p. 24.

which the nation could rely, against its gradually increasing, and consequently depreciating, enormously. For, whatever may be the respectability and intelligence of the governor of the bank, and of the board generally, however pure may be their intentions, yet, with principles, concerning their business, evidently and avowedly favourable to a progressive augmentation of their paper, and urged, on the one hand by the profits of the institution, and on the other by the pressing applications of a body of merchants, who will be the more anxious for additional discounts the more experience shall teach them that, when they obtain them, they may safely calculate on advancing prices, whilst no immediate distress warns them of any ultimate calamity;—under such circumstances, I say, the bank can hardly be supposed capable of permanently and successfully resisting the tendency of their situation, and of refraining, unless compelled by law, from a constant, though gradual multiplication of their issues.

I shall now proceed to say a few words on *foreign exchanges*, the present lowness of which, the Bullion committee is disposed to ascribe solely to the depreciation of the currency, though they have not succeeded in accounting for the circumstance, that from the year 1801 to the year 1805, the exchange at Hamburg rose from 30*s*. to 35*s*. 8*d*., while the amount of bank notes in circulation increased from fifteen to nineteen millions; a circumstance which has evidently caused them not a little embarrassment, as appears from the interrogatories, concerning it, put to the *Continental merchant*.*

Foreign exchange is the market price of the currency of one country in the currency of another.

The merchant at Hamburg who wishes to dispose of bills of exchange on London has in fact pounds sterling, that is, notes of the bank of England, for sale, which he offers like any other commodity, and the commercial value of which, of course, will be regulated by demand and supply.

Now the demand must be either greater than the supply, or equal to it, or less.

According to the prevalence of one or the other of these alternatives different descriptions of people become the purchasers of bills.

When the demand is greater than the supply, or equal to it—a state of things which occurs, when the balance of pay-

* Minutes, p. 84.

ments is much in favour of England or even—the purchasers are people who have to liquidate debts in England, and whose *ultimate object*, in going into the bill market, is the acquisition of bank of England notes. These, or which amount to the same, the order for them, in the shape of a bill, they send to the person in England to whom they are indebted, and *they have done.*

To liquidate their debts they have only this means, or to remit specie—for to ship commodities, which may be wanted in England, as it is a different branch of business from their own, consequently out of their line, and requiring knowledge and experience and connexions, different from theirs—as it involves new risks and constitutes a new order of transactions,—is what they will not generally think of.

They will not readily resort, even to the shipping of specie, though no mistake can be here committed with regard to quality, and fluctuation of value is less to be apprehended. The transaction causes always more trouble, is attended with the expense of freight, insurance and commission, and involves some risk and uncertainty as to the safety and period of arrival, particularly in times, when the shipments must be made circuitously. Such uncertainty, moreover, is always a very disagreeable circumstance, for payments are mostly delayed, until it would be improper and disadvantageous to defer them any longer.

Further, the trade in the precious metals is in the hands of a few houses only. On the arrival, therefore, of the specie, say gold, in England, it is sent, by the merchant who receives it, to one of these houses, and the question occurs—what they will give for it? But the sole purchasers of gold, when none is wanted for exportation, are the manufacturers and the bank of England. The former use in the course of the whole year no more than the value of about 100,000*l.* sterling, and they will purchase that gradually, as they have occasion for it, particularly when gold is rather high. The latter, not being under the necessity of purchasing gold since the suspension of cash payments—will not take it at a higher price than 4*l.* sterling per ounce. It is therefore obvious that Mocatta & Goldsmid, and similar houses, trading in bullion, will hardly be disposed to allow more for gold than the bank price, when gold is brought from the continent.

But suppose they are willing to give eight or nine per cent. above this price—since the charges of freight, insurance &c., amount at present from five to seven per cent.,* it is certain

* Minutes, p. 52.

that, under all the circumstances mentioned, a merchant in Hamburg, having a debt to pay in England, will rather give par, or a few per cent. above par, for a good bill, that is for bank notes, than remit gold, to be converted into bank notes by his creditor. The venders of bank notes, knowing this,—because it is a calculation they can make as well as the purchasers,—will not in this case sell their bank notes below, but rather hold them at a few per cent. above, par, in proportion as the demand for them exceeds the supply.

In the reverse of this case, when the supply exceeds the demand—and particularly when the excess is great, which arises from a balance of payments unfavourable to England,—then those who have debts to pay in England are too few in number, and the sum they aggregately owe is too small to absorb all, or even a great proportion, of the pounds sterling in the market. The holders therefore offer them lower and lower in order to find purchasers, and as *natural* purchasers, that is people indebted to England, are wanting, they must offer them *so low* as to induce people to buy them, with a view of obtaining for them gold from England in return. The *ultimate* object of these purchasers, therefore, is not to have bank notes in London, but to have English gold in Hamburg. The purchase of bills with them is not the *closing act* of a previous transaction—it is the *first act* of a new one, entered into, as all mercantile transactions must be, in the intention of gain. The price of the bank notes in Hamburg, is, therefore, now regulated, by the price at which gold bullion can be procured in London, and the former must be so low as to enable the purchaser to obtain in return for them, so much gold from England, as will refund his money with charges—that is with commission, freight and insurance, and with a reasonable profit to compensate him for his risk and trouble.

Messrs. Mocatta & Goldsmid, &c. are therefore applied to for gold, and it is the gold merchants in London who now may be said to fix the exchange, that is the market value of pounds sterling, in Hamburg, whilst in the first case the command, that is the power of fixing the price, lay with the holders of this commodity there.

The gold merchants, seeing a new demand arise for their article, the extent of which cannot be calculated, and which may be immense, whilst their stock is limited—for what could have induced them to provide a large one?—endeavour to obtain as high a price for it as they can, and thus the price of gold becomes now an object of contention, and must assume its due rate conformably to the quantity of it for sale,

and the demand for it on the one hand, and the amount of currency in circulation and pounds sterling bills in the markets abroad, on the other.

After these observations, it cannot be difficult to find a correct and satisfactory answer, to the question proposed by the bullion committee to the *Continental merchant*.* The committee asked, "Can you assign any cause why in the exchange "between Hamburg and London at the period of the suspen- "sion of cash payments of the bank in 1797, it was at thirty- "five or about three per cent. above what is called par; that "from that date it rose gradually in 1797 and 1798 to thirty- "eight and a half, and was still at thirty-six in the middle of "1799, when a great commercial distress began to prevail, "when subsidies were paid and large importations of corn "took place, while the circulation of the bank of England had "been increased from about eleven millions to thirteen and a "half? In 1800 and 1801 the exchange was depressed down to "twenty-nine and lower, the amount of bank notes being then "fifteen or sixteen millions. During 1803 and 1804 and the "greatest part of 1805 the exchange gradually rose to 35*s*. 6*d*. "or about five or six per cent. above par, while the amount of "bank notes increased to eighteen millions?"

The exchange was above par till in the middle of the year 1799, notwithstanding the increased circulation of the bank of England; because the balance of payments, during this period, was considerably in favour of England. The commercial distress which then took place, the subsidies, the importations of grain—turned the balance of payments against England. Gold came in demand for exportation, the bullion merchants held it high, its price rose and the exchange sunk to twenty-nine. The balance of payments became again favourable in 1803, and continued so till 1805. Gold was lost sight of, and the drawers of bills at Hamburg once more regulated the rate of exchange, which caused it to rise to 35*s*. 6*d*. notwithstanding the increase of bank notes to eighteen millions.

An exalted or depressed public opinion,—as the *Continental merchant* thinks†—had no influence on this occasion. Opinion altogether interferes in this affair very little. The purchaser of pounds sterling simply calculates what they are worth to him, and how he can turn them to account, without troubling himself concerning their ultimate fate. The great variations in the exchange, at the periods to which the committee refers, arose solely from the circumstance, that the

* Minutes, p. 84. † *Ibid.* p. 88.

power of fixing the rate of exchange, in consequence of political and other occurrences, lay alternately with the drawers in Hamburg and the bullion merchants in London. As long as the demand for bills in Hamburg is as great or greater than the supply, pounds sterling in Hamburg take their own independent course, as sugar and coffee would, uninfluenced by the increased quantity of bank notes that may circulate in England. When the supply greatly exceeds the demand, the speculative purchasers appear on the stage. They necessarily are under the control of the bullion merchant in London, and now, therefore, inevitably the exchange must sink down so much the lower as—from the inconvertibility of bank notes and *their* depreciation, or the general advance of *gold*, or *both*—the difference in the commercial value of the two, has become the greater. There is nothing extraordinary or calamitous in the occurrence, only that from the inconvertibility of bank notes, the oscillations of that commercial barometer—exchange—have become greater and more rapid than formerly; the novelty of which phenomenon causes surprise, and this surprise contributes to give it permanency, as it prevents that kind of speculation which consists in buying when bills are low, with a view of reselling them after they have improved.

It would be more extraordinary if, with a real balance of trade, and a subsequent balance of payments, in favour of England—for they cannot, unless disturbed by heavy expenses of government abroad, be at variance for any length of time—the foreign exchanges should remain considerably below what has been called par; or, what is the same, that pounds sterling on the continent should remain nearly as cheap as they are at present; or, what is still the same, that the bullion merchants in London should be disposed to *take* gold nearly at the same rate at which they now *sell* it, though, when the demand for exportation ceases, they have but little call for it. During the years 1806, '7, and '8—on account of the smallness of the transactions which took place—the prices of it were not even quoted.*

The inconvertibility of bank paper, from having rendered gold comparatively useless, must, regularly, have the effect of keeping its price in England *down*. But for the same reason, and on account of its consequent diminution in quantity, it must rise the more rapidly, and the higher, as soon as

* Minutes, evidence of Wm. Merle, esq. p. 51

an unfavourable balance of payments causes a demand for exportation.

The misconceptions on this subject, under which the *Continental merchant*, notwithstanding his intelligence and the useful information he has communicated to the committee, seems to have laboured—have probably arisen from the continuing low state of exchange when the balance of trade appeared so greatly in favour of Great Britain;—as for instance during the year 1810. But we should be careful not to consider as *financially effective exports*, all the goods and produce which have been sent abroad. If England chooses to establish depots at Heligoland, Cadiz, Lisbon, Vera Cruz, Laguira, Rio Janeiro, Buenos Ayres &c., it will cause brilliant customhouse returns but will have no influence on foreign exchanges—a commercial barometer much more to be relied on than the usual documents. Whether the goods are stored in England or in foreign countries, can have no effect on the real balance of trade. Only that proportion of them, which has been actually disposed of, can be considered as coming into operation financially; that is, as being applicable towards making payment for imports; and this only to the amount of the net proceeds which they have realized. If the account sales, received by the exporting merchants from abroad, could be substituted for the customhouse returns of exports on the one side, and the expenses of government in foreign parts, as well as the sums remitted to foreigners on account of interest paid or capitals withdrawn, be added on the other, the real balance would probably be very different from the one generally exhibited. When we consider the situation of the continent of Europe—the desolation of war in some parts, the prevailing distress and altered habits of the people in others, and the embarrassments attending commercial intercourse throughout, it seems difficult to believe that the consumption of British commodities, and of commodities supplied through Great Britain, should be really so much greater than formerly, as the aspect of the columns of exports from thence, would seem to indicate.

I cannot leave this subject without adverting to another question proposed by the committee to the *Continental merchant*.

The committee interrogated him thus: "Has not a scarcity "of currency, and consequent fall in the price of commodities,

"a direct tendency to remedy the evil of an unfavourable ex-
"change by which such scarcity was created?" And he re-
plied, "It undoubtedly has."*

Just so Mr. *Hume* was of opinion that a high price of goods, arising from plenty of money, diminished, and a low price of goods, arising from scarcity of money, promoted exportation. "In general we may observe," he says, "that the dearness "of every thing, from plenty of money, is a disadvantage "which attends an established commerce, and sets bounds to "it in every country, by enabling the poorer states to under-"sell the richer in all foreign markets.

"This has made me entertain a doubt concerning the bene-"fit of banks and paper credit, which are so generally es-"teemed advantageous to every nation.

"That provisions and labour should become dear by the "increase of trade and money, is, in many respects, an incon-"venience; but an inconvenience that is unavoidable, and the "effect of that public wealth and prosperity which are the end "of all our wishes. It is compensated by the advantages which "we reap from the possession of these precious metals, and "the weight which they give the nation in all foreign wars and "negotiations. But there appears no reason for increasing "that inconvenience by a counterfeit money, which foreigners "will not accept of in any payment, and which any great dis-"order in the state will reduce to nothing. There are, it is "true, many people in every rich state, who, having large "sums of money, would prefer paper, with good security, as "being of more easy transport and more safe custody. If the "public provide not a bank, private bankers will take advan-"tage of this circumstance, as the goldsmiths formerly did "in London, and as the bankers do, at present, in Dublin; and, "therefore, it is better that a public company should enjoy the "benefit of that paper credit, which always will have place in "every opulent kingdom. But, to endeavour artificially to in-"crease such a credit can never be the interest of any *trading* "nation, but *must lay them under disadvantages*, by increasing "money beyond its natural proportion to labour and commo-"dities, and thereby *heightening their price* to the merchant "and manufacturer. And, in this view, it must be allowed "that no bank could be more advantageous than such a one "which locked up all the money it received, and never aug-"mented the circulating coin, as is usual, by returning part "of its treasure into commerce. A public bank, by this expe-

* Minutes, p. 86.

"dient, might cut off much of the dealings of private bankers "and money-jobbers; and, though the state bore the charge of "salaries to the directors and tellers of this bank, (for, accord- "ing to the preceding supposition it would have no profit "from its dealings), the *national advantage* resulting from the "*low price of labour* and the destruction of paper credit, would "be a sufficient compensation."*

He has expressed the same opinion still more forcibly in the following passage: "Suppose four fifths of all the money "in Great Britain to be annihilated in one night, and the na- "tion reduced to the same condition, with regard to specie, "as in the reigns of the Harrys and Edwards; what would be "the consequence? Must not the price of all labour and com- "modities sink in proportion, and every thing be sold as "cheap as they were in those ages? *What nation would then "dispute with us in any foreign market?* or pretend to navi- "gate, or to *sell manufactures at the same price* which to us "would afford sufficient profit? In how little time, therefore, "must this bring back the money which we had lost, and raise "us to the level of all the neighbouring nations; where, after "we have arrived, we immediately lose the advantage of the "cheapness of labour and commodities; and the farther flow- "ing in of money is stopped by our fullness and repletion?

"Again; suppose that all the money of Great Britain were "multiplied five fold in a night; must not the contrary effect "follow? Must not all labour and commodities rise to such "an exorbitant height, that no neighbouring nation could "afford to buy from us; while their commodities, on the other "hand, become, comparatively, so cheap, that, in spite of all "laws that could be formed, they would be run in upon us, "and ours flow out, till we fell to a level with foreigners and "lost that great superiority of riches which had laid us under "such disadvantage.

"Now it is evident that the same causes which would cor- "rect these exorbitant inequalities, were they to happen mi- "raculously, must prevent their happening in the common "course of nature; and must for ever, in all neighbouring na- "tions, preserve money nearly proportionate to the art and "industry of each nation."†

Were these ideas perfectly correct, the restriction of the cash payments of the bank of England could not be considered otherwise than as a great evil. For, as this restriction discon- nects bank paper and the precious metals, the tendency of

* Essay on Money.

† Essay on the Balance of Trade.

foreign exchanges to equalize the currencies of countries, between which a commercial intercourse subsists, and to maintain, to a certain degree, *equality* of prices, must be done away with the cessation of the convertibility of notes into cash at the option of the holder. When prices have risen in a country, in consequence of an over issue of *convertible* paper, the gold must be found reduced in value, together with the paper for which it is exchangeable, when compared with its value in another country differently circumstanced. Gold will then be demanded of the bank in the first country, in exchange for their notes, and exported to the latter country, till by an increase of gold in the one, and a diminution of it, and of paper, in the other, the equilibrium of value and of prices becomes reestablished.

By this means the evil, of which Mr. Hume complains in the essay on money, corrects itself, as he has shown in the passage quoted from the essay on the balance of trade, and as Mr. *H. Thornton* has still further explained in commenting on Hume.*

But this natural corrective, which had escaped the attention of Hume when he wrote the first of those essays, ceases to operate when bank notes are no longer exchangeable for gold. Hume, had he spoken of an *inconvertible* currency would have thus worded his last quoted sentence: "Now it is evident that "the same causes which would correct the inequalities of "prices, were they to arise from an exorbitant amount of pa-"per interchangeable with gold, will fail of producing this "effect, when arising from an exorbitant amount, in one "country, of a currency not so interchangeable, and, there-"fore, of no use in the other." It is true that also in this case, when the foreign exchanges become very low—when pounds sterling, for instance, abroad, become very cheap, gold will be exported, as long as it is to be found, in order to liquidate the demands of the foreign country, arising from an unfavourable balance of payments. But, this exportation must cease when there is no more, and, even while it is going on, it will have no tendency to diminish the amount of bank notes and other paper in circulation, and to lessen the prices of commodities. The exportation of gold bullion in this respect will have no more effect than the exportation of pig iron or of block tin would have; because there is no more connexion, since the suspension of cash payments, between bank notes and the

* An Inquiry into the nature and effects of the paper credit of Great Britain, chap. 11.

former, than between bank notes and the latter. So that, if the foreign commerce of a country really depended on the nominal cheapness of its commodities, the restriction system, by its effect of multiplying paper currency and raising prices, or at least by its preventing the reduction of paper currency and the diminution of prices, to their low rate in adjoining countries—a rate resulting from the increased value of gold—would threaten destruction to the commercial prosperity of Great Britain, and steps ought immediately to be taken for the earliest possible resumption of cash payments, with whatever temporary inconvenience, distress or sacrifice they might be attended. The *cost* of a measure must be out of the question when *all* is at stake.

The foreign commerce of a country, however, does by no means depend on the nominal cheapness of its commodities. The ideas of Mr. *Hume* on this subject appear to me erroneous, as well as those of the *Continental merchant*, and of Mr. *Henry Thornton*. The latter remarks that, "the great "enhancement of the price of British labour and commodi- "ties is an evil arising from any considerable addition to our "paper currency, with which we ought, unquestionably, to "connect that of the diminution of the sale of our manufac- "tures in foreign markets."*

Hume and Thornton, and—as far as I know—all the intermediate writers on the same subject, seem to have forgotten that a man's labour is always a man's labour, whether you rate it at a few or at many shillings per day; that an excellent piece of broad cloth is always worth itself; and that it is rather—what I shall term the *intrinsic cheapness* of commodities, that is, the great proportion of excellence,—the superiority of quality *in reference to the little expense of labour at which it was obtained*, than their *nominal* cheapness, which regulates commerce between two countries. The *nominal* cheapness or dearness of commodities, arising from scarcity or abundance of circulating medium—which must be presumed, when prices are settled, equally to affect all things in the same country—and their *intrinsic* cheapness, or dearness, arising from the little or great expense of labour, in reference to quality, at which such commodities were produced; these two are essentially different.

If fifteen people, with their skill, machinery and apparatus, a hundred years ago, could manufacture and finish broad cloth at the rate of *one* piece per day; and fifteen people *now* with

* Chap. 11. p. 268. of the Philadelphia edition.

their improved skill, machinery and apparatus, manufacture and finish broad cloth of equal goodness at the rate of *two* pieces per day; or, if, with the same quantity manufactured and finished in the same time by the same number of hands, the quality is *twice* as good: then, it appears to me, broad cloth is intrinsically cheaper by one half now, than it was a hundred years ago, should even the nominal price—that is, the price of it in exchange for circulating medium,—be now as many pounds sterling as it was shillings at the former period; and that it depends on this *intrinsic* cheapness whether foreign countries will purchase it in preference.

When Russia wants broad cloth she goes to market with hemp, iron, tallow, coarse linens, &c. and she will evidently trade where she can obtain the greatest quantity of broad cloth, of a suitable quality, in exchange for a given amount of her own articles, because *there* she will trade to the best advantage.

Then the question is, which of two countries, in competition with each other with regard to the trade of Russia, can afford to give her a greater quantity of broad cloth of the desired quality, in exchange for a given amount of *her* articles:—that, where, on account of a scarcity of circulating medium, broad cloth is nominally cheap, though intrinsically dear? or that, where, on account of an abundance of circulating medium, it is nominally dear, though intrinsically cheap?

But it is obvious, that the respective quantity of circulating medium in the two, as far as it has an influence on the price of a piece of broad cloth, must also sway the price of the Russia articles, and so far the difference of the nominal prices can give no advantage in the trade to either. For, if silver be the circulating medium in one, and paper the circulating medium in the other, and, on account of the scarcity of silver, a man's labour, in the first, can be commanded at half its paper price in the other, it is impossible that the silver price of iron in the former should not be also proportionally so much lower, than its paper price in the latter.

If the latter, in consequence of her greater capital, greater skill, better machinery, superior method of working, &c. can produce in the same time, with half the number of hands, as much broad cloth, of equal goodness as the other employing twice that number; or if, with an equal number of hands she can produce it of a quality as good again, it is clear that Russia will have an advantage of fifty per cent. in trading with the latter country, either as to the quantity or quality of the broad cloth, received in exchange for a given amount of her iron,

hemp and other of her exports, and that of course to it she will give the preference.

Some may think that she ought to export to the latter country, and import from the former.—But then she must bring back something for her exports, and, whatever that might be, it would be affected by the same state of the currency, which enabled her to obtain high prices for her own articles. If gold and silver,—probably the only commodities she could make use of to send to the cheap country, to be invested in broad cloth,—she would have to give for them so much currency, as to gain nothing by the change, particularly when we take into consideration the double freights, double insurances, and double charges of every description. And this also proves that a currency, not convertible, and which suffers the precious metals to take their own independent course with other commodities, is less likely, when in excess, to prove injurious in this respect, than a convertible currency, which sometimes, though for short periods only, will pull down the precious metals to its own level of depreciation, and thus occasionally give rival commerce an advantage which, but for this circumstance, it would not have enjoyed.

Others may imagine that the result will be different, when the whole transaction is conducted for account of the country furnishing the broad cloth; for instance on British account. But this would be a mistake, because, when the British merchant sends broad cloth to Russia in the first instance, he can obviously afford to sell it there the cheaper, the more the hemp, &c. he obtains in return, will bring at home.

Nor is it material, whether the two operations are performed by the same, or, by different descriptions of people.—Suppose the merchant who sends broad cloth to Russia, desires his correspondent to remit him the proceeds in bills on London; and the other, who wants hemp from thence, gives directions to his agent to purchase for his account and to draw on him. Then the correspondent will purchase of the agent the pound sterling bills with the rubles which the cloth has produced, and will be able to obtain them so much the cheaper as hemp is the higher in England.

Since the great basis of foreign commerce is the mutual exchange of commodities, in which operation the precious metals serve, at most, to settle balances; and since the currency of one nation becomes itself, in the markets of the other, a fluctuating commodity, adapting its price to the reciprocal relations of both, by which means the differences of nominal value adjust themselves in the real transfers—it thus appears that the preference, which commodities command for expor-

tation, springs from *intrinsic* cheapness, not from their *nominal* prices. This intrinsic cheapness will be maintained, whatever variations may occur in the state of the currency, and consequently, in their nominal prices, as long as, *cæteris paribus*, the country, furnishing them, shall enjoy a preeminence in capital, machinery, method, experience, skill, and in the general organization of business, on all of which the productiveness, and perfection of labour principally depend.

I shall conclude with a few observations, the justness of which can hardly fail to be admitted, if the reasoning in the foregoing pages, from which they naturally flow, has been found correct.

The measure of the suspension of the cash payments of the bank, was certainly not a measure of choice but of necessity; and, the circumstances which rendered it indispensable, either continue to exist, or may occur again at every moment. Besides, from the necessary effect of the measure itself, which rendered gold, for domestic purposes, comparatively useless, the quantity of this precious metal in the country cannot have otherwise than diminished more and more. A speedy resumption of cash payments, even if it were so desirable, as the committee seem to have thought, appears, therefore, to be impossible, and out of the question.

On the other hand, the experience of the last thirteen years would prove, were it less theoretically certain, that an inconvertible circulating medium, issued in a manner so as to make its security ultimately rest on the real and substantial property of the nation, answers the purposes of circulating medium just as well as one that is convertible. The idea of considering the precious metals as *universal equivalents*, which has misled Mr. Huskisson,* is erroneous. Beyond the mountains, in this country, you cannot pass a gold piece, though you may readily pass a bank note; because the people know the latter but not the former. You would in vain preach to them about intrinsic value, and universal equivalent, and imperishable nature! They want, in exchange for what they sell, something wherewith they can buy, something that *passes*, and they care for nothing further. Such is the case with all intelligent men in regard to circulating medium. If we have money to spare, they say, we pur-

*. The Question, &c. p. 3.

chase more lands; then we know what we have, and we can procure them for bank notes as well, and better, than for gold.

It cannot even be denied that a currency, totally unconnected with the precious metals, and, therefore, nationally, *inalienable*, has not only in its favour that it will prevent transitory alarms, such as those of 1793 and 1797, should they recur, from being productive of the same confusion and pressure, (for nobody would think of hoarding bank notes),—but is also attended with this decided advantage, that it exempts a country from being involved in those distresses of its neighbours, which arise from a scarcity and augmented value of the precious metals in consequence of long protracted political calamities and the precariousness of property attending them—or at least from being involved to such a degree as to have its circulation embarrassed, its agriculture and industry paralized, and all its domestic concerns deranged. You justly observed last spring, in parliament, "that, in former wars, poverty had always compelled the nation to make peace." The scarcity of the precious metals, when these are the circulating medium, may certainly compel a nation, fighting for her *prosperity and wealth*, to relinquish the contest, though unsubdued; because she sees the very end and object of her struggle dwindle away, in consequence of the efforts she makes to support them. But an *inconvertible* circulating medium, maintaining, in some measure, *invulnerability* at home, may enable her much longer, and with a hope of ultimate success, to bid defiance to her enemies; a situation with regard to England, the more to be wished for, as the cause in which she is engaged, may be considered not only as hers, but as that of mankind.

Yet, on the other hand, it cannot be disputed that, a currency gradually increasing, and therefore diminishing in value, and depreciating, is a great political evil, and were it inseparable from inconvertibility, the alternative might be justly deemed perplexing.

I cannot however see that depreciation is an unavoidable attendant on inconvertibility, if we consider depreciation of currency to be, what alone should be considered as such—not a deviation in value, from that of the precious metals, but a deviation from its *own* value;—from the value it maintained previously to the change.

The nominal price of things, which depends on quantity of currency—is immaterial; but the *steadiness* of those prices, as far as they depend on a *uniform quantity* of that currency, is important. The rules, on the controlling operation of which the bank profess to rely for preventing an excessive issue

of their paper, we have found inadequate to the purpose. The two first of them, if scrupulously adhered to, cannot fail in causing bank paper always to represent the solid and substantial property of the nation; but the third, exacting a hire of five per cent. from those who wish to obtain a supply of it, will not prevent excessive and pressing applications, and, of course, excessive issues, unless some check be previously imposed to guard against the constant augmentation of their paper, and, consequently, against the constant increase of nominal prices.

Moreover, I can see no good reasons to hinder parliament from *confining by law* the issues of the bank within certain limits. The sum of twenty millions of pounds sterling I should suppose fully adequate to the exigencies of the public; but, if the amount actually in circulation considerably exceeds this sum, it may, in order to prevent distress, be limited at what it actually is. As soon as this has been done, the nominal prices of commodities, as far as they depend on the amount of currency in circulation, will *gradually* become *fixed*, and the *check of hire* will then produce its full effect, and prevent even the *whole* limited quantity of currency from being constantly maintained in circulation, when, from an altered situation of trade, the *whole* is no longer wanted. On the other hand, from the peculiar pliancy of circulating medium, and from the many contrivances to which ingenuity has resorted, in order to economize its use, when it happens to be rather scarce, a considerably increased trade would experience *no great inconvenience* from its being thus limited. Indeed, the extension of the limited sum should never be thought of by parliament, unless the necessity of a greater floating commercial capital manifested itself unequivocally and forcibly, by great embarrassments of the mercantile public, springing from the want of it, and by a considerable and general fall in the prices of commodities.

Why parliament should be averse to such a measure it is difficult to conceive, unless the ultimate object were, by an insensible, but regularly progressive depreciation of the currency, to effect a gradual, but not less certain, national bankruptcy. This however cannot be presumed, and, if it is not contemplated, it seems careless and unjustifiable in a high degree to leave, as they have done, the important charge, of the regulation of the currency, with a company of merchants, whose professed principles of conduct, in this respect, have been found erroneous, whilst their individual interest, and the interest of that active and importunate portion of the commu-

nity, with whom they are in constant relations of business, must inevitably, unless they are beings of a superior order, give them a strong bias towards its gradual but constant augmentation.

The various other expedients which have been proposed, to prevent a depreciation of the currency, or to check the further progress of it, appear to me scarcely deserving of notice. The only great and efficient measure for this purpose, is to say, the notes of the bank, which fortunately, in England, control all other circulating paper, shall not exceed a certain number of millions, unless the limitation be extended by act of parliament. To meddle with the profits of the bank, would be improper and of no avail, as it would not reach the issues occasionally made in other ways, than by discounting bills. Nor does the idea, which has been suggested, of compelling the bank annually to pay in specie, one tenth of their notes now in circulation, bear scrutiny. For,

If the amount of their issues be not limited, then they immediately will, or may, at least, reissue notes to the same or a greater amount, and then the measure must prove abortive.

And if limited, then, in my opinion, nothing more is required. A considerable reduction of the sum of bank notes, now in circulation, would be attended with inconveniences which the paying of one tenth of them in gold, would not obviate. For gold will disappear as long as it remains dearer abroad than in England, and it can only be rendered equally dear in England, by creating a distressing scarcity of circulating medium at home. Consequently, to pay any proportion of the bank notes in gold, would be only putting a premium into the pockets of those, who might happen to be holders of bank notes at the time, without producing any public benefit whatever.

I cannot myself see any great necessity for, or even any great utility in reconnecting the present currency of England, with the precious metals, and I see many reasons against it. But, if it should be deemed essential, I believe it might be accomplished, without having recourse to an impracticable general resumption of cash payments, or, an inefficient fractional one.

After having fixed the maximum of notes, which it shall be lawful for the bank to issue, and without altering the rate of legal interest in the country generally, let the bank be compelled from month to month, to compute the rate of their charge of discount, according to the average market price of gold bullion, during the four weeks last preceding.

For instance, if during the month of December the average market price of gold bullion had been twenty-five per cent. above its mint price, or, what is the same, above the nominal value of paper, then 100*l.* in gold would be worth 125*l.* in currency, and 5 per cent. in gold, would be equal to $6\frac{1}{4}$ per cent. in paper. Of course the bank would declare on the first of January, that the rate of discount during that month would be $6\frac{1}{4}$ per cent. and so every month following.

It is obvious that to raise thus the *hire*, which the principal no longer augmentable at pleasure, would be obliged to earn, before it could produce any profit to the borrowers, would be lifting up the principal itself, and making it keep pace with the value of gold. Nor would the emoluments of the bank be increased, because less would be borrowed. Twenty millions lent at $6\frac{1}{4}$ per cent. would not produce more than twenty-five millions at 5 per cent. Thus would the nation have an inalienable, floating, commercial paper capital, equal in value to gold, without being subject to the *trouble* incident to the procuring the metal itself, or the *distress* which, in times like the present, must attend the detention of it in the country.

POSTSCRIPT.

Since the above was written, I have had an opportunity of reading a late publication on the same subject, intitled "A "review of the controversy respecting the high price of bul- "lion and the state of our currency;" and also the proceedings in parliament during the month of July last, respecting the gold coin bill and the resolutions introduced by earl *Stanhope*.*

* The following is the gold coin bill as amended by the committee. It is intituled, 'An act for making more effectual provision for preventing the current gold coin of the realm from being paid or accepted for a greater value than the current value of such coin; for preventing any note or notes of the governor and company of the bank of England from being received for any smaller sum than the sum therein specified; and for staying proceedings upon any distress by tender of such notes.'

Whereas it is expedient to enact as is herein after provided: Be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that, from and after the passing of this act, no person shall receive or pay for any gold coin lawfully current within the realm, any more in value, benefit, profit, or advantage, than the true lawful value of such coin, whether such value, benefit, profit or advantage be paid, made, or taken in lawful money, or in any note or notes, bill or bills of the governor and company of the bank of England, or in any silver token or tokens issued by the said governor and com-

The author of "The Review of the Controversy" has analyzed the arguments of the respective parties with great acuteness and discrimination, and discussed the whole question with more perspicuity both of language and method, than any other writer on the same subject, with whom I am acquainted. I perceive with much satisfaction a striking coincidence of sentiment between us on all the principal points.

The quotations from *Burnet*, in reference to the times of king *William*, and what is mentioned of those of queen *Anne*, and of the state of the currency during the American war, and chiefly in 1783, when the bank was more reduced in cash than even in 1797, corroborate what has been insisted upon above, viz. that by rendering her currency inconvertible England has escaped one of the most disastrous consequences, which have formerly attended all long protracted wars, has enabled herself to prosecute her present war with greater vigour, and has thus improved an advantage, arising from the nature of her government and institutions, which is not within the

pany, or by any or all of the said means wholly or partly, or by any device, shift, or contrivance whatsoever.

And be it further enacted, by the authority aforesaid, that no person shall by any device, shift, or contrivance whatsoever, receive or pay any note or notes, bill or bills of the governor and company of the bank of England, as of less value in money, except lawful discount, than the sum expressed therein, to be thereby made so payable.

And be it enacted, by the authority aforesaid, that in case any person shall proceed by distress to recover from any tenant or other person liable to such distress, any rent or sum of money due from such tenant or other person, it shall be lawful for such tenant or other person, in every such case, to tender notes of the governor and company of the bank of England, expressed to be payable on demand, to the amount and in discharge of such rent or sum so due to the person on whose behalf such distress is made, or to the officer or person making such distress on his behalf; and in case such tender shall be accepted, or in case such tender shall be made and refused, the goods taken in such distress shall be forthwith returned to the party distrained upon, unless the party distraining and refusing to accept such tender shall insist that a greater sum is due than the sum so tendered, and in such case the parties shall proceed as usual in such cases; but if it shall appear that no more was due than the sum so tendered, then the party who tendered such sum shall be intitled to the costs of all subsequent proceedings: Provided always, that the person to whom such rent or sum of money is due shall have and be intitled to all such other remedies for the recovery thereof, exclusive of distress, as such person had or was intitled to at the time of making such distress, if such person shall not think proper to accept such tender so made as aforesaid: Provided also, that nothing herein contained shall affect the right of any tenant, or other such person as aforesaid having such right to replevy the goods taken in distress, in case, without making such tender as aforesaid, he shall so think fit.

Provided always, and be it further enacted, that this act shall be in force to and until the 25th day of March, one thousand eight hundred and twelve, and no longer.

reach of her enemy, and must become the more *decided* the longer the contest is continued.

The table of prices of various commodities, introduced to show that their fluctuations have not followed those of the price of gold bullion, though satisfactory and to the purpose, would have been in my opinion still more so, if the retail prices of domestic commodities—such as butchers' meat, the common beverage of the people, cheese, fuel &c., had been stated in preference to those of East and West India produce, the supply, consumption and qualities of which have undergone of late such considerable changes.

The increase of prices in France subsequent to the revolution, is, in my opinion, attributable more to the *new distribution of the circulating medium incident to that event*, than to its increased quantity. From this observation however, Paris and its vicinity, in their present state, are perhaps to be excepted, since there the spoils of the continent may be said to centre.

I cannot quite agree with the ingenious author, when he terms (p. 87) the idea of a *permanent restriction of bank payments*, an *absurdity* not to be thought of. If an inconvertible currency, as he has very forcibly shown, is not only adequate to all the purposes of circulating medium in times of difficulty and danger, but is even attended with a *decided great advantage*, it is difficult to conceive why it should be inadequate to it, in times of tranquillity and peace; or why a system which must be *deviated* from at *critical periods*—because it would then be fraught with mischief—should be generally preferable to one which adapts itself equally well to *all situations?*

The fallacy of the arguments of the bullionists, as stated in p. 90, is still more obvious if it be considered—as I have endeavoured to show—that cheapness or dearness of commodities, when arising from a diminished or augmented circulating medium, has been erroneously viewed as causing increased or diminished exportations.

The arguments of the *practical men*, to prove that an *excessive issue* of bank paper is not *probable*, or even *possible*—stated, but not controverted by the author, (p. 102) I think I have shown to be utterly destitute of weight, unless a *maximum of issues* is from time to time established by law; and *with this precaution*, I cannot help thinking it very questionable at least, whether a permanently inconvertible currency, on the principles of that of Great Britain, may not be preferable to one *convertible*, but which, in *trying times*, it becomes expedient to render *inconvertible*. The practical experience of a favourable state of exchanges with an inconvertible currency

in times of tranquillity, would at least totally obviate the fears and alarms, which inconvertibility occasions, when forced upon the nation (as it now has been) by unfavourable exchanges, in consequence of an embarrassed trade.

With respect to the proceedings of parliament on the bullion question, it is, I think to be regretted, that the resolutions of earl Stanhope, which go to the full length of making the credits of the bank of England, in the shape of book-entries and book-transfers, a *legal tender*, have not been adopted at once and acted upon in preference. Gold, as circulating medium, would then have been done away with entirely, and this commodity would have been left to itself as the other metals. The attempt made in the amended bill to put a parliamentary value upon it, when coined into guineas; to say guineas shall be worth in bank notes so much and not more, and *vice versa*, seems inconsistent with the spirit of British legislation, and the more erroneous as *value is essentially incontrollable*, whilst, on the other hand, the law, such as it is, affords but an imperfect protection against *unreasonable* creditors, the only description against whom a protection was wanted.

It is to be expected however that the resolutions of earl *Stanhope*, of which the bill above mentioned was only a forerunner, will be finally adopted by parliament at their next session, and bank of England credits, in the shape of book-entries and transfers, be made the legal tender of Great Britain, whilst a fixed maximum of such credits will at the same time guard against their depreciation.

A new era will then begin in political economy, and the cause of a government of laws, and of the institutions congenial to it, will have acquired a new and important bulwark against the machinations, or the military preponderance of despotic power.

Mémoires et Lettres du Maréchal, Prince de Ligne; faisant Suite aux Lettres et Pensées du même Auteur, publiées par Madame la Baronne de Stael Holstein: contenant des Anecdotes inédites sur les differentes Cours de l'Europe, &c. 2 tomes, 12mo.

Memoirs and Letters of Mareschal Prince de Ligne; forming a Sequel to the Letters and Thoughts of the same Author, edited by the Baroness de Stael Holstein, and containing Anecdotes hitherto unpublished concerning the different Courts of Europe. 2 vols. 12mo.

It is in general, with considerable reluctance, that we venture to dissent from any established opinion; and when, in the course of the perusal of the work of an author of acknowledged reputation, we find the impression with which we began the volume vanishing by degrees, and our judgment gradually deciding against him, the discovery is accompanied by a sensation almost amounting to pain. Emotions of pleasure or admiration are the more readily admitted, as we know them to be sanctioned by the decision of the wise, the great, the witty, or the good, while a difference of opinion gives us reason to suspect in ourselves, the failure of some faculty which might have given our judgment a direction similar to theirs; and this suspicion is more or less mortifying.

Such were the feelings with which we closed the volumes now before us; they form a sequel to one which has already passed the ordeal of criticism in Europe, nor is it our intention to appeal, however we may disapprove of the verdict already passed upon it. The first selection was introduced to us by an authority paramount in wit; but, with us, a knowledge of the circumstances which accompanied the editorship, has contributed to invalidate that authority. In the autumn of 1807, Madame de Stael made a journey to Vienna, the present residence of the Prince de Ligne. During the winter she passed there, she experienced every possible attention from the prince, who by the rank he held, both at court and in general society, was enabled to facilitate her participation in every enjoyment that capital could afford. At her departure he requested as a favour that she would usher into the world, a selection from his numerous works; and this, her gratitude in the first place, but above all the good nature for which that distinguished lady is eminent, would not allow her to refuse.

Has Madame de Stael repaid the obligation? We think the extensive currency of the "Volumette," extracted from

twenty-eight octavo volumes, the weight of which had previously sunk them in coteries of Vienna and Paris, (a currency so evidently proved by our reviewing them at this distant quarter of the globe) decides that she has.

It would have been fortunate for the prince, had this general circulation stopped at the first volume, and had not some interested editor imagined that he could distil a double quantity of essence, from the rejected mass of ingredients. The perusal of the first volume left, if not a high idea, at least a favourable impression, of the author. The vices inherent to the society in which he had always lived, were compensated by his animated gaiety, and by his brilliant valour, which was indeed worthy of the age of chivalry. Those who take the trouble of reading through the second and third volumes, which form the "Sequel" will, we think, agree with us, that on closing them, this favourable impression is not only destroyed, but is replaced by one of a contrary nature. To those who do not take that trouble we will state our reason for thinking so.

The present editor has disclosed an unfortunate fact to the public; for after having toiled through the twenty-eight volumes of the Prince de Ligne's works, and, to use his words, "sought for the few remaining flowers which Madame de Stael's delicate hand had rejected," he asserts, that his collection, together with the prior publication, "contains in general all that the Prince de Ligne has written most worthy of being read." This too at the end of a laboured panegyric on the author. But it is time to examine in detail, or to give some account of, the contents of his selection.

They consist principally of fragments of his correspondence; of his letters on private theatricals; of his essay on gardening, and of a work intitled "Mes Ecarts, ou ma tête en Liberté;"—of different memoirs on the Count de Bonneval, on the modern Greeks, on Gipsies, on Cretins, on the Jews, and on Poland; of several portraits, (a descriptive style of writing we believe peculiar to the French:) almost the whole interspersed with detached thoughts and sentences.

A light work of this kind, were it published in our native tongue, would first of all demand a strict examination into the merits of its style. In works on science the importance of the subject matter may induce the public to tolerate a deficiency in that point; but the elegance of the diction ought always to be in the inverse ratio of the triviality of the subject. Even in this case however, and at the risk of being thought presumptuous, in hazarding any observations on the phraseology of a work published in a foreign language, we must say, that the one before us appears very deficient in that respect.

From the marked difference in the publications of the two editors, we have every reason to suspect that Madame de Stael was more solicitous than it is usual for editors to be, about the fame of her author. This difference consists, in the absence throughout the first selection, of those glaring faults in diction, which make themselves conspicuous in the pages before us, even to the foreign reader. That lady thought it necessary to say in her preface, that the prince's style was a "style parlé," which was a delicate manner of saying that he had a very bad one in writing; but, like a skilful singer who has to execute the air of a faulty composer, and knows how to veil the faults in it, Madame de Stael gave the whole a something of her own. In general indeed it may be truly said of her, "nihil tetigit quod non ornabit."

The present editor has we suspect been more literally exact. In support of these observations, we shall content ourselves with giving two or three instances taken at random, from the body of the work.

In speaking of a memoir on Monsieur de Bonneval, which our author is endeavouring to prove spurious, he says, "Cependant comme un menteur rencontre quelquefois par hasard, *je crois*, à ce singulier orage (*je crois* même l'avoir entendu dire à mon pere) qui, au moment de sa naissance, écrasa la croix du clocher de sa paroisse, et à l'horoscope de l'aigle, tenant dans son bec une fleur de lys, surmontée d'un croissant; et quand je dis que *j'y crois*, c'est-à dire que *je crois* que cela s'est dit, je sais bien que ce sont des prédictions faites après coup, mais j'en ai une idée confuse." See vol. I. p. 123.

The last assertion explains indeed the obscurity of the whole phrase, for the reverse of Boileau's axiom is also true.

"Ce que l'on conçoit bien s'énonce clairement."

But as the phrase stands, it is impossible to find out the exact extent of the author's belief; on whose birth day the church spire was crushed, or by whom or what; all which circumstances it was meant to explain fully to the reader.

Again—"C'est Casanova, homme de beaucoup d'esprit et d'une érudition profonde, connu par son fameux duel avec Branicki, grand-général de Pologne, sa fuite des Plombs de Venise, et quantité d'ouvrages et d'aventures; frère du grand peintre de batailles du même nom; mort à Dux en Bohême; bibliothécaire de mon neveu, le comte de Waldstein, qui m'a dit, entre autres choses, qu'un des plaisirs du comte de Bonneval étoit, lorsqu'il étoit sûr de ne voir personne, de s'habiller à la Française."

After a reperusal of this phrase we have not been able to find out whether it was the comte de Waldstein or his librarian Casanova, that related this anecdote to the author; nor, (if it

was Casanova as we suspect he means it to be) have we discovered a sufficient importance in the fact, to oblige him to give us the enumeration of the qualities, connexions, and titles, in support of the authenticity of so trivial a communication.

It would be difficult to find a parallel to the following ill judged, and ill expressed piece of enthusiasm at Ermenonville. As these extravagancies took place during his second visit to the abode of the philosopher, it is impossible to guess what his sensations might have been at the time of the first. "Je suis retourné," says he, "à Ermenonville; je n'ai pensé "qu'à Julie; je crois que je l'ai pleurée." (This uncertainty is really pleasant.) "J'ai béni son historien; je me suis assis sur "son banc. On m'a montré *les canards que sa main a nourris.* "*Il m'a semblé que leur cri étoit plus agréable, mais guère plus* "*juste.* Je me suis remis à penser à Julie," &c.* All this translated literally into English, would appear to be a burlesque on the imitators of Sterne, nor do we know any language in which such whining sentimentality would be tolerable, except in the German, where it would at all events harmonize with, and be characteristic of, the genius of the language.

With regard to the matter contained in these volumes much of it is curious to general readers, none of it important. The longest, and in our opinion, the most interesting pieces are, the Memoir on "M. Le Comte de Bonneval," that on Poland; and the Portrait of the Empress Catharine.

The life of M. de Bonneval would furnish the plan of an entertaining novel, and has it seems been worked up into one, to bring the authenticity of which into question is the purpose of our Author's memoir. We shall content ourselves with recommending it, as likely to afford half an hour's amusement to our readers.

The Memoir on Poland gives a melancholy picture of the internal politics of that country, at the time it was written. Considering it as to its object, it seems to have been merely intended to inculcate a servile deference to Russia, and of course, a total dereliction by the Poles of their own political rights. In this memoir, as in most of the other political pieces, the style is too trivial for the subject, and we find the punster always interfering with the politician. This constant play upon words diminishes the effect of the few truths that are scattered among them, and impresses the reader with the idea that the Author

* "I returned to Ermenonville; I thought of nothing but Julia: I believe "I wept for her fate. I blessed her historian:—I sat on his bench. They "showed me *the ducks which his hand had fed. It seemed to me as if their* "*quacking was more agreeable,* &c.—I thought of Julia again, &c."

attended more to the manner than the matter, which is far from being always the case.

Even the inhabitants of our republic might derive benefit, *mutatis mutandis*, from the serious consideration of the following advice, although it proceeds from the lips of a monarchist. "Point de cachotterie, surtout à la Russie. Point d'incohérence "dans vos principes. Que les grandes familles ne se brouillent "pas entre elles. Que les honnêtes gens ne se trompent point "et ne se laissent point tromper par ceux qui ne le sont "pas. Ne vous accusez pas les uns les autres, en disant: Ce-"lui-ci *est Russe*, celui-là est *Prussien. On engage souvent à "l'être de bons patriotes qui n'y pensoient pas.* Oubliez vos "anciennes querelles particulières, vos petits malentendus, et "chassez ces petits intrigans subalternes, qui, après vous avoir "brouillés les uns avec les autres, se moquent de vous."

Nothing can be more interesting and curious than the details given by intelligent persons, who are in habits of intimacy, with those removed by an elevated rank above the generality of mankind. Many of the secret springs of the great machine of despotic governments are discovered by this means. Hence the pleasure we derive from the perusal of the numerous class of French "Memoires," which are unfortunately almost peculiar to that nation, and may be called the chit-chat of history. We have often thought that the "fooles," whom it was formerly the fashion to keep about a court, and more immediately about the person of a monarch, (and who by-the-by were often very clever fellows) would have formed a very amusing body of historians, had they given an account of every thing they saw and heard. The fashion has now changed: instead of their privileged fools, monarchs have their privileged wits. Our author has been on this footing at several courts, and luckily possesses the cacoëthes, of which we have just been lamenting the failure, in those to whose post he has succeeded. The result is some very curious information.

The Portrait of Catharine begins in a manner characteristic of our author. "*Catherine le Grand* (j'espère que l'Europe confirmera ce nom que je lui ai donné) *Catherine le Grand* n'est plus. Ces deux mots sont affreux à prononcer. Je *n'aurais pû les écrire hier*," &c. He luckily, however, on the following day, recovered sufficient presence of mind to give us a detailed and curious picture of the Empress, which is the more valuable as it puts her in a more amiable light, than that in which we have been accustomed to view her. Due allowance is, indeed, to be made for the warm feelings of partiality by which, under all circumstances, the author must naturally have been animated.

Notwithstanding the length of this Portrait, we shall proceed to insert a translation of the most interesting parts of it, as they cannot fail to afford amusement to our readers. The difficulty, if not impossibility, of conveying in our language the full and just sense of the *style parlé*, the colloquial diction of the prince, has deterred us from giving an English dress to the short quotations we have already made.

"The character of Catharine," says our author, "is well known in painting and in narrative, and has been faithfully delineated. She looked well even sixteen years ago. It was easy to perceive she had been handsome, rather than pretty. The majesty of her forehead was tempered by an agreeable pair of eyes, and a pleasant smile; but that forehead bespoke every thing. Without being a Lavater, you could read there, as if in a book, genius, justice, courage, depth, penetration, equanimity, candour, mildness, firmness. Her chin was pointed, although not absolutely salient; her complexion fresh, and her bosom well turned. She acquired the last advantage at the expense of her shape, which had been exceedingly thin;—but you easily grow fat in Russia. She was *recherchée* in her headdress; but would, nevertheless, have looked better, if she had suffered her hair to descend somewhat on her forehead, and thus as it were to accompany her face."

"You did not perceive that she was low in stature. She told me, with a slow accent, that she had been once extremely vivacious; which it was impossible to comprehend. On entering a room, her three bows, in the Russian style, were always made in the same manner; one on the right, the other on the left, and the third in front. Every thing with her was measured and methodical. She possessed the art of listening, and had so much the habit of presence of mind, that she appeared to understand what was said, even when thinking of something else. She never talked, for the mere purpose of talking, and always consulted the interests of those who conversed with her. The empress Maria Theresa had, nevertheless, more of magic and seduction in her character. She satisfied and enthralled you more at first sight, being herself hurried away by the desire of pleasing every body, for which her natural grace supplied her with less studied means. Maria Theresa overcame you at once. Catharine made a less powerful impression, but never failed to strengthen it in the sequel. Enthusiasm preceded the one, but followed the other. Both were of the most invincible fortitude. Their great souls were steeled against adversity."

"If the sex of Catharine had allowed her to exert the ac-

tivity of a man, who can personally inspect every thing, be every where, and look into details, there would not have existed a single abuse in her empire. With this exception, she was greater than Peter the first, and would never have signed the shameful capitulation of Pruth. Anne and Elizabeth would, on the contrary, have made but common men, although as women their reign was not without some share of glory."

"Catharine had every thing that was good, that is to say, all that was great, about Louis the fourteenth. She resembled him in her magnificence, her feasts, her pensions, her purchases, and her pomp. She held a better court; because she had nothing that was theatrical, or inflated, attached to her arrangements. The various military or Asiatic spectacle, presented by the rich dress of thirty different nations, was, however, not a little imposing. At a much cheaper rate, Louis believed himself to be "*nec pluribus impar;*" and Alexander that he was the son of Jupiter Ammon. The words of Catharine were undoubtedly of great weight, but she did not seem to attach value to them herself. External adoration was not what she exacted. You trembled before Louis;—you felt confident in the presence of Catharine. Louis was,

"Made drunk with honour and debauched with praise."

Catharine pursued glory and diffused it, without losing her judgment. There was something however, to intoxicate a woman in the continued féerie or magic of our triumphal and romantic journey to the Tauride; in the surprises, the squadrons of men of war, and of horse, the illuminations of ten leagues in extent, the enchanted palaces, and the gardens which were created for her in the course of a single night: when she saw at her feet Hospadarss from Wallachia, dethroned kings from Caucasus, and families of persecuted princes, coming to demand of her, either succour or refuge. Instead of having her head turned by all this, she said, on visiting the field of Pultawa, "*See now upon what empires depend; a day decides "their lot. Had it not been for the error which you have pointed "out to me, in the conduct of the Swedes, we would not gentle-"men be now here.*"

"Her imperial majesty spoke of the part which we all have respectively to act in the world, and knew well that it is but a *part*. Had she been any other than she was,—in whatever sphere of life she might have been obliged to act one—she would have acquitted herself equally well by the aid of her profound judgment. But the character of empress was best suited, to her face, to her gait, to the elevation of her soul, to the immensity of her genius as vast as her empire. She

knew herself, and knew how to distinguish merit in others. Louis the fourteenth in his selection of servants, for the most part either practised favoritism, or trusted to chance. Catharine chose hers deliberately, and put each man in his place. She said to me one day, "*I often smile in secret at the alarms of "a general or a minister, when I give a favourable reception to "his enemies. Because they are his, they are not on that ac- "count mine, do I whisper to myself. I employ them because "they possess ability; and I laugh at those who imagine, that I "will no longer make use of persons, whom they do not like.*"

"The empress in quitting one of the provincial governments which she had visited, was still, even when getting into her carriage, offering compliments, thanks and presents."

"*Your majesty*," said I, "*appears to be well satisfied with "these people.*" "*Not at all*," was her answer; "*but I always "praise aloud; and scold in a very low tone.*"

"*What kind of a person*," would she say to me, "*did you sup- "pose that I had?*" Tall, stiff, and a great hoop. This answer amused her, when she recollected it, and I was often reproached with it. "*I thought*," did I add, "that there was nothing about your majesty, *but what was to be admired, and admiration is very tiresome.*" The contrast formed by the simplicity of her discourse in society, and the greatness of her actions, particularly contributed to render her interesting. She would laugh at a blunder, a quotation, a silly speech, and could be amused with any thing. She took part in the smallest piece of pleasantry, and would apply it very humorously.

"*Is it not true*," said she to me one day, "*that I have not wit enough for Paris? I am persuaded that if I had gone thither like other of my country women, as a mere traveller, I should not have obtained a supper—What would you have? Mdlle Gardel my governess could instruct me no further. She was an old French refugee. She did not teach me even enough to get me well married in my neighbourhood. Mdlle Gardel and myself little expected all that was to happen.*" I never saw any thing more prompt or judicious than the directions of Catharine, with respect to her last, and unexpected war with Sweden. She sent them in her own handwriting to prince Potemkin during our siege of Oczahow. There was at the bottom—"*Have I done well, my master?*" She often accused herself of ignorance, and made use of what may be called her pretensions in this way, to amuse herself at the expense of physicians, academicians, the half learned and false connoisseurs. I agreed with her that she knew nothing of painting or music; and proved to her sometimes, rather more clearly than she could

have wished, that her taste in architecture was but indifferent. She boasted of her acquaintance with medals, but for this I cannot answer."

When her anti-musical ear prevented her from making any proficiency in the mechanism of versification, which the count de Ségur and myself undertook to teach her, she said to us, "*You see well, gentlemen, that you do but praise me in the gross, but that in detail you find me very ignorant.*" I replied that she must confess herself skilled in one science at least. "*And what is that?*" That of saying and doing things *apropos*. Your majesty never has uttered a word, or given an order, or made a change, or begun or finished an undertaking, but at the proper time and in the proper manner. "*All that,*" *said she,* "*may appear very well; but let us sift the matter. It is to Prince Orlow that I owe the lustre of a part of my reign; for he advised me to send my fleet to the Archipelago. It is to Prince Potemkin that I owe the Tauride, and the expulsion of the Tartars of every description, who constantly menaced the empire. All that can be advanced is, that I placed these gentlemen in command. I owe my victories to Marshal Romanzow. Here is what I said to him: Marshal, we are to have blows; it is better to give than to receive them. Believe me, I can boast of nothing but good-luck; and if the world be somewhat satisfied with me, it is because I have a little firmness and consistency in my principles. I give an ample share of authority to those whom I employ.*"

She has also said to me, "*I could wager that in your Europe, you would have it that my affairs are in a bad way. It is constantly alleged that I am about to become bankrupt; that I am too fond of expense. Well, my little household will go on, nevertheless, in the old way. My seeming prodigality is an economy; every thing remains in the country and comes back to me one day or other. I have yet some few resources left; but since you told me that you would either sell, game away, or lose, the diamonds which I might give you, here is simply my portrait in a ring worth about a hundred rubles.*"

Catharine practised all the modes of giving. Her benefits were sometimes conferred in a singular and most ingenious manner. For example, she wrote thus to Count Suwarrow.—*You know that I never promote any one out of his turn. I am incapable of doing wrong to an elder officer: but it is you yourself who have just created yourself Marshal, by the conquest of Poland.*

"She always travelled with the portrait of Peter I upon

her snuff-box. "It is," said she, "in order that I may ask myself at every moment of the day,—what would he have commanded, what would he have forbidden, what would he have done, were he in my place." She never suffered either Peter I or Louis XIV to be censured in her presence, nor any thing to be uttered before her, offensive either to religion or morality. She scrupulously abstained from indulging in any *badinage* of a personal nature, or that savoured of licentiousness."

"I have had occasion to remark her personal courage. Before we entered Barejisarai, the twelve horses which we had in harness, and which were too weak to drag our great vehicle, rushed, or rather, were hurried down, a steep descent. There was cause to tremble for our necks. I should have been much more alarmed than I was, if I had not wished to see whether the empress was frightened. She was as calm, as at the breakfast we had just quitted."

"She was somewhat fastidious in her choice of reading. She disliked what was gloomy, or too refined in point of wit and sentiment. She was fond of the novels of *Le Sage*, of *Moliere* and of *Corneille*. *Rabelais* and *Scarron* had made her laugh, but were no longer remembered. She had no memory for what was frivolous, or uninteresting, and forgot nothing that was of an opposite character. *Plutarch*, *Tacitus* and *Montaigne* were favourite authors. She was indifferent about, and ignorant of modern literature, and possessed more of logic than of rhetoric. Her light works, such for instance as her comedies, had all a serious moral. All the letters which I received from her, are filled with strong, elevated, and prodigiously luminous ideas; with sharp and pointed criticisms, particularly when any thing that occurred in Europe, excited her indignation; and moreover, with gaiety and simplicity. There is rather more of perspicuity, than of ease in her style. Her serious works are profound. Her history of Russia, is, in my opinion, equal to the "Chronological tables" of president *Henault*. But in the lighter shades, the attractive details of narrative, and in the powers of colouring, she was deficient. Frederick II did not himself excel in colouring, but he sometimes displayed the other qualities, and was more a person of letters than Catharine."

"The greatest dissimulation of which her imperial majesty was capable, consisted in this; the device of not revealing all that she thought, and all that she knew. Never did any thing insidious or mysterious fall from her lips. She was too proud to deceive others, and when she deceived herself, she sought consolation in her general good fortune, and in the superiority

of her mind to human vicissitudes. Nevertheless some unpleasant ideas with regard to the disasters which obscured the close of Louis the fourteenth's reign, obtruded themselves upon her reflection, but they passed off like clouds. I am, perhaps, the only person who saw that, for a quarter of an hour only, the last declaration of war issued against her by the Turks, made her think modestly that there was nothing sure in this world, and that glory and success were somewhat unstable."

"She left her apartment, however, with an air as serene as that which she wore before the arrival of the courier."

"Catharine signalized every day by acts of humanity. One morning she thus addressed me: "*In order not to make my attendants get up too early, because it is exceedingly cold, I kindled my fire myself. A little sweep, who thought I would not rise until half past five, was in the chimney. He screamed most lustily. I very soon extinguished the fire, and asked a thousand pardons.*" There was some malice about her, in one point; that she would bestow a kind look and sometimes a valuable benefit upon those, of whom she had reason to complain, in order to embarrass them. I cannot refrain from mentioning a trait of *despotism* illustrative of her disposition in this respect. She interdicted a person of her society the use of his own house, saying to him; "*You shall have in mine, twice a day, a table with twelve covers. Those whom you like to have at your own house you shall have here; I forbid you to ruin yourself, but I order you to continue to spend money, since that is agreeable to you.*"

"Calumny which has not spared the best, the most feeling, the most amiable of queens, whose character and conduct I am more than any other person able to justify, will, perhaps, outrage the memory of the most illustrious of sovereigns, and overspread her tomb with thorns. Calumny has swept away the flowers which should have covered the grave of Marie Antoinette, and may pluck the laurels from that of Catharine. The manufacturers of historical anecdote, the ill intentioned, and those who write to attract notice or to get money, will endeavour to diminish the fame of the latter. But it will triumph over their attempts. Posterity will recollect what I myself have seen constantly displayed, in travelling with her over a space of two thousand leagues, through her dominions;—the love and admiration of her subjects; and in her armies, a most enthusiastic attachment and devotion on the part of the soldiery. I have seen them, in the trenches, when exposed to the balls of the infidels, and braving the rigours of the season, console and animate themselves by repeating the name of *Matouscha*, their *mother and their idol.*"

We have been accustomed in the societies in which we have lived in Europe, to hear the Prince de Ligne extolled "proné" as being a model among the living wits of the descriptive style of writing called "Portraits." We give that of Iphise as a specimen of them, as being, we think, in his best manner, and above all because it is short.

PORTRAIT D'IPHISE.

"Iphise ne va pas à la messe; elle se croit un esprit fort. Elle n'a pas d'amant; elle se croit vertueuse. Mais c'est une aristocrate de vertu; elle ne parle qu'à des gens qui en ont, comme elle, seize quartiers. Elle ne fait du bien à personne; elle se croit économe. Elle ne dit du bien de personne; elle se croit sincère, et ennemie de la flatterie. Iphise ne lit pas; elle croit qu'elle réfléchit. Iphise n'est ni à Dieu, ni aux hommes, ni au diable: Iphise est à elle-même, et c'est tout ce qu'il y a de pis."

We cannot say much of the taste which the prince displays in his treatise on gardening: all that he gives seems very much exaggerated, and puts us in mind of the story we have heard of a magnificent Austrian prince, whose taste lay in changing "quadrata rotundis," and whose favourite plan was that of a palace in which the Collisseum, and St. Peter's at Rome (both in their full dimensions) were introduced as accessaries, the one to serve as a court-yard, and the other as a private chapel. The following observation can only be the result of bad taste.

"Et puis ils me font de la peine, ces dieux presque toujours mal bâtis, ces empereurs, ces philosophes toujours debout, toujours au soleil, toujours exposés aux badauds. Qu'on les groupe quelquefois; *qu'on les couche*, (can he really mean the *emperors* and *philosophers?*) et qu'on leur donne le caractère de bienfaisance, ou de galanterie!!!

As to the general tenor of the work, it is such as displays the greatest immorality, both in the author and the society in which he lived. Is it possible to give a more decided proof of the dissolute "ton" which must have reigned, than is to be found in the following paragraph.

"Il y a peu de femmes que la calomnie ou la légèreté ayent épargnées. Je défie qu'en voyant pour la première fois une jolie femme, on ne dise: *qui est-ce qui l'aime?* On répond: *Je ne sais pas trop qui.....mais on croit que*.....Alors les gens qui veulent tout savoir nomment quelqu'un à tout hasard."

That there should be a little impiety with all this is not surprising.

" De même que l'on a dit autrefois: *Que la lumière se fasse et la lumière fut faite*, je voudrois qu'on dit: *faites-nous des oiseaux, des poissons, des cygnes surtout.*"

The following note, unique of its kind, we cannot omit giving.

" Je ne repondrois pas que cet avis ne lui eût été donné" (à M. de Bonneval), " par M. de Prié, s'il étoit encore en vie; car je ne sais ce qu'est devenue ce vil et bas intrigant, *que j'ai puni dans la personne de son petit-fils, en étant amoureux de sa femme.*"*

It is impossible to say which predominates most in us: contempt for the bad taste and vanity which could suggest such a note, or an inclination to laughter at the self sufficiency with which it is introduced.

Towards the end of the second volume there is a defence of the late queen of France; it is short, but we think conclusive, as being the production of such a man as the prince de Ligne, and is in every way calculated to refute the calumnies which have been circulated, for the purpose of destroying in the breasts of the public, even the pity which the melancholy fate of that princess had generally inspired. We shall venture to transcribe this account of Marie Antoinette in the original, as no version could do justice to the naïveté of the text, or let the reader into the spirit of our author's panegyric.

Sur Marie-Antoinette, reine de France.

" Piccini, à son arrivée en France, répéta les deux premièrs actes de son *Roland* devant la reine, où ils réussirent beaucoup. La reine voulut chanter devant lui, lui proposa de l'accompagner au piano, et choisit précisément un morceau d'*Alceste;* de façon que la première chose que fit Piccini à Versailles fut d'accompagner un air de *Gluck.*

" La reine m'a raconté elle-même cet heureux et plaisant mal-à-propos, dont elle rioit et rougissoit encore. La grâce qu'elle mettoit à reparer ces petits malheurs qui lui arrivoient souvent par une sorte d'ingénuité qui lui alloit si bien, peignoit la bonté et la sensibilité de la plus belle des âmes, qui ajoutoient des charmes à sa figure, sur laquelle on voyoit se développer, en rougissant, ses jolis regrets, ses excuses, et souvent ses beinfaits. Combien de fois n'ai-je pas surpris tous ces mouvemens qui se succédoient les uns aux autres, quand, pour me faire rire, je tendois des piéges à Sa Majesté! J'aurois voulu qu'on ne lui en eût jamais tendu d'autres. Encore n'en a-t-on pas abusé, comme on l'a cru. Cette malheureuse princesse n'a que trop prouvé, en courant à la mort, son trop de délicatesse, en n'osant point

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* " I cannot say that this piece of advice, of which I have been speaking, " was not given to M. de Bonneval, by M. de Prié, if he were still alive, " for I know not what has become of this vile and contemptible intriguer, " *whom I have punished in the person of his grand-son, by making love to the* " *wife of the latter.*"

prendre sur elle de contredire le roi ni ses ministres. La seule affaire sérieuse dont je l'ai vue occupée, a été d'empêcher, comme française et autrichienne à la fois, la guerre qui, sans elle, se seroit allumée au sujet de l'Escaut. Les dix millions qu'elle engagea le roi à prêter à la république de Hollande, pour payer les frais et appaiser l'empereur, son frère, ont donné occasion à la plus bête de toutes les calomnies, qu'elle lui faisoit passer des trésors. Nous n'en avions pas besoin; la maison d'Autriche étoit mieux dans ses affaires que la maison de Bourbon. Les reproches sur son luxe étoient aussi mal fondés. Il n'y a jamais eu de femme de chambre, de maîtresse de roi, ou de ministre qui n'en eût davantage. Elle s'occupoit si peu de sa toilette, qu'elle se laissa pendant plusieurs années coiffer, on ne peut pas plus mal, par un nommé Larceneur, qui l'étoit venu chercher à Vienne, pour ne pas lui faire de la peine. Il est vrai qu'en sortant de ses mains, elle mettoit les siennes dans ses cheveux, pour s'arranger à l'air de son visage. Quant au reproche sur son jeu, je ne lui ai jamais vu perdre plus de deux mille louis, et encore étoit-ce à ces jeux d'étiquette, où elle avoit peur de gagner à ceux qui étoient obligés de faire sa partie. Souvent, à la vérité, après avoir reçu le premier jour du mois cinq cents louis qui étoient, à ce que je crois pouvoir me rappeler, l'argent de sa poche, elle n'avoit plus le sou. Je me souviens d'avoir quêté un jour, parmi ses valets de pied, et dans son antichambre, vingtcinq louis qu'elle vouloit donner à une malheureuse femme qui en avoit besoin. Sa prétendue galanterie ne fut jamais qu'un sentiment profond d'amitié, et peut-être distingué, pour une ou deux personnes, et une coquetterie générale de femme et de reine, pour plaire à tout le monde. Dans le tems même où la jeunesse et le défaut d'expérience pouvoient engager à se mettre trop à son aise vis-à-vis d'elle, il n'y eut jamais aucun de nous, qui avions le bonheur de la voir tous les jours, qui osât en abuser, par la plus petite inconvenance; elle faisoit la reine sans s'en douter, on l'adoroit sans songer à l'aimer.

" A l'occasion de ses finances, je me souviens qu'un jour elle s'amusa beaucoup, lorsque je me moquois de sa cassette, où je savois qu'il n'y avoit pas un louis, et que j'avois vu partir de Fontainebleau au grand galop et entourée de gardes, suivant un usage ridicule de la cour; celui-là et bien d'autres, comme de payer, par exemple, soixante mille fr. en ficelle pour empaqueter. On fit supprimer, pendant plusieurs années, les grands voyages. La reine se moquoit elle-même des abus qu'elle n'osoit point faire réformer, et surtout de son poulet qui coûtoit cent louis par an. Je ne sais plus si c'étoit la feue reine, ou Anne, ou Marie-Thérese d'Autriche, qui en demanda un, un jour l'après dîner, pour elle ou pour son petit chien. Il ne s'en trouva pas, et tous les ans, depuis ce tems-là, on en fit un établissement, à la même heure, ce qui devint ensuite un profit ou une charge à la Cour."

We have been principally induced to give a detailed account of these volumes, because it seemed to us, that they afford a complete picture of a description of character, which must be totally unknown to every one, whom chance has not conducted to the continent of Europe. The author seems to be the head of that class of " aimable Roués" of which every *coterie* has one as a necessary appendage. The author's sphere is a court; and never, to be sure, was any person admitted with more justice into this his *sanctum sanctorum*, for apparently there never existed a truer believer in the infallibility of crowned heads. We are not quite certain whether he does not hold blasphemy and treasonable speaking, as crimes of equal magnitude: at all events, he

tells us himself that a sovereign is as much above a plebeian, and that his ways are as unintelligible to him, as those of the Deity.

"Les prétendus philosophes, après avoir dit du mal de Dieu *qu'ils ne connoissent point*, en disent des souverains *qu'ils ne connoissent pas davantage*. Il y a deux façons de les punir; l'une, en ne les punissant pas, car ils sont assez fous pour chercher une célébrité de malheur; et l'autre, en défendant la liberté de la presse lorsqu'on en abuse."

With a little less servility, and a great deal less immorality, there would be much to counterbalance the prince's other faults, which are perhaps the result of his education. We know from good authority that he is loved and esteemed by every one around him; that he is a most winning companion, "facile à vivre," and constitutes the happiness of his domestic circle.

Z.

Mémoire sur la Conduite de la France et de l'Angleterre à l'égard des Neutres. A Paris 1810. pp. 243.

Memoir on the Conduct of France and England towards Neutrals. Paris, 1810. pp. 243. 8vo.

The work which we here announce is one of no ordinary interest for the rulers of this country. It was published in Paris in the summer of 1810, and must of course, from the nature of the supervision exercised over the press in that capital, be understood as speaking the sense of the French government on the topics of which it treats. Independently of the general presumption to this effect, which is *certain* as to all works of a political cast, there are, in this case, particular reasons leading infallibly to the same conclusion. We find throughout, intrinsic evidence that the volume was either written or dictated, by a member of that government, and given to the world under its immediate auspices. The tone is evidently official, and the tenets are those, which it is one of the most favourite objects of the French despot, to establish in the belief of mankind, although the course of his habitual policy, and the operation of all his measures, tend directly to confirm their falsehood. The author of the work, whoever he may be, is a person of some ability as a writer, and well skilled in all the common-place sophisms and invectives, with respect to the maritime pretensions of Great Britain, which have filled the columns of the Moniteur with little intermission or variety, since the commencement of the French revolution. He displays no despicable share of learning in maritime jurisprudence and diplomatic history, and indulges occasionally in that kind of sarcasm, and still more largely, in that kind of declamation, which distinguish the writings of Hauterive, to whom in fact the Memoir has been attributed.

The purport of this informal manifesto, as it may be called, is to prove, that France has, from the earliest periods, recognised the most liberal principles with respect to the rights of neutral commerce and the freedom of navigation; that she has neglected no opportunity of proclaiming them; and that in all her proceedings however violent in appearance, or illegal, according to the maxims of universal justice,—she has had but one object,—the *liberty of the seas;* while on the other hand, the conduct of England has been the very reverse; invariably animated by an insatiable lust of domination, and obsti-

nately opposed to the principles of maritime legislation adopted by the continental powers.

The mode in which the Author of the Memoir attempts to substantiate this doctrine is, by tracing summarily the progress of maritime law from its origin to the present time, and investigating the true principles, upon which it rests according to the usage of nations, the opinions of enlightened jurists and the spirit of modern treaties. The historical deduction embraces four distinct periods; the first of which ends with the year 1763;—the second with the commencement of the French revolution in 1789;—the third with the treaty of Amiens in 1802;—the fourth with the state of things at the time the work was published.

With this deduction is interwoven, of course, an highly coloured narrative of the unremitted efforts of the British, both by perfidy and violence, to monopolize all power on the ocean, and to explode the maxims of public law received by the other nations of Europe.

As it might be expected also, the moderation, disinterestedness, and liberality of France are made to contrast with the cupidity, pride and ambition of her rival, in such a manner, that there cannot,—to use the language of the Memoir itself, —"fail to result, a prejudice altogether in favour of France and her cause." Not much is said concerning the conduct of the two powers towards this country, during the third period. The fourth, however,—or the division corresponding to it, which embraces nearly one half of the work,—is taken up entirely with the history of their relations with the United States, who are represented, as having no ground of complaint against France, and every reason to execrate the lawless policy of her antagonist, "our natural enemy and our vindictive oppressor."

From the space allotted to American concerns, and the stress laid upon them, it is quite apparent that the work was intended to bear chiefly upon the questions arising out of the late proceedings of the belligerents, which now engage our public councils, and to give us and the world to understand,— somewhat obliquely indeed, but yet with perfect clearness,— what are the steady views and the fixed resolves of his imperial majesty, with respect to his decrees and to our relative deportment. We shall, therefore, extract merely such passages as appear to have a direct application to our affairs, and to be calculated to enlighten us on the topics of most interest to our public welfare. The merits of the argument to which the first divisions of the work are allot-

ted, do not call for any particular attention from us. The author exhibits some ingenuity in this part, together with all the partiality and knavery of a profligate swindler pleading his own cause, and labouring to acquire a reputation for honesty and philanthropy, chiefly with a view of accomplishing the more easily, the entire ruin of his dupes. In dwelling upon the concurrence of the nations of the continent in certain doctrines of maritime legislation, and upon the resistance made to them by the British, he studiously keeps out of view the important facts—that the former in their occasional coalitions, (for nothing like *unanimity* on this head, ever prevailed) could have been prompted by some other impulse, than a mere sense of right and justice;—that the naval power of Great Britain, oftentimes a barrier to their schemes of aggrandizement, and seemingly injurious to their commercial interests, might have been viewed with an eye of jealousy and aversion;—that the desire of seeing it either destroyed or reduced, might have influenced them to unite, from time to time, in any code likely to conduce to that end;—and particularly that France, in abetting as she uniformly did, such sinister coalitions, cannot, with any sagacious or impartial reader of history, obtain credit for any other motive, than that of prostrating a hated and dreaded rival.

It is material for us, to remark in this place, that the principles, which, according to the first part of this Memoir, were, until the middle of the eighteenth century, the established law of continental Europe, and which France at all times asserted, are no other than those announced in the preamble to the Berlin decree; to wit; that maritime war cannot be lawfully extended to any private property whatever, nor to persons who are not military;—that the right of blockade should be restrained to fortified places actually invested by a competent force; that free ships make free goods, &c. This last maxim particularly, is the burden of every page of the first and second divisions, and declared to be fundamental as to the rights of trading nations, and essential to the prosperity of neutral commerce.

"The Americans," says the Memoir in page 101, "had suffered more than any other nation from the instructions issued from time to time by the British council. No people was more interested in the establishment of a maritime code founded upon neutral rights. Nevertheless, whether the fear of a rupture with England prevented their making opposition to her usurpations, or the voice of private, silenced that of the

public interest, it must be acknowledged that the principles once received in America with so much enthusiasm, underwent a sensible change. It appears even from the correspondence of Mr. *Jefferson* with Mr. *Genet* and with Mr. *Morris*, that the doctrine of the Americans became quite conformable to the views of England; *and that they considered the seizure of enemy's property on board of a neutral ship, as authorized by the law of nations.* Without doubt this consideration emboldened the British government to push its pretensions still further."

"We may be well astonished that, after suffering so much injury, and so many iniquitous aggressions, the government of the United States, should, instead of demanding reparation, have sent Mr. Jay to London to negotiate the treaty of 1794, in which not only is there no mention made of the rights so vehemently asserted, and solemnly recognised, by the continental powers fifteen years before, but the privilege of search, of impressment, and of the extension of blockades, is expressly reserved to Great Britain, and the principle that "the flag covers the merchandise" totally abandoned."

Again in page 131—"It is evident that, in consequence of the conduct and maxims of the British *at the commencement of the present war*, and of the acquiescence of neutrals—France was *then* intitled to exercise the right of blockade against England, in all its possible extension, and seize English merchandise wherever she could find them. Moreover, as the war declared in 1802 was in fact a war of commerce, France, from the necessity under which she laboured of providing for her own safety, was intitled to deprive England of all means of prolonging the contest, by subjecting her commerce to every possible impediment. Neutrals not having taken the same attitude towards both belligerents, could no longer claim the advantages of neutrality; thus France was no longer bound towards them, and from the beginning of the rupture, could justifiably have taken every measure which was required by her interests injured as they were by the cupidity of the British, and the blind condescension of neutrals."

With respect to the orders in council, the conduct of our government in the affair of captain *Whitby*, and the issuing of the Berlin and Milan decrees, the Memoir holds the following language:

"On the murder of John Pearce by the captain of the Leander, president Jefferson issued a proclamation, according

to which it might have been supposed, that the outrage could admit of no explanations. Messrs. Monroe and Pinkney had been sent on a special mission, for the redress of grievances and injuries sustained by America; but the English government avoided all explanation. After three months of delay, war appeared to be the only resort: *Such was the opinion of the American government; but finally the dread of this contest, or that of losing a brokerage* (*courtage*) *advantageous to individuals, caused it to forget the national honour and interest.* The time was consumed in mere discussion. The ports of France and of her allies remained open to a hostile commerce. The American merchants remained satisfied with the character of mere brokers or factors, when they should have supported their rights as a commercial body. Then the neutrality of the Americans became burdensome to France. She had then no other resource left than to retaliate on England, and the Americans had no right to complain. Thus the decree of Berlin issued at that time, was but a measure of reprisals which the French government had postponed too long, and by which it testified its desire of remaining faithful to the principles which it had adopted, and *of bringing its enemies to recognise the freedom or inviolability of flags, the illegality of the capture of merchantmen, and the unlimited freedom of commerce. This was its object, and has been so in the whole series of rigorous but necessary measures which it has taken.*" P. 155. et seq.

"It must be confessed that if the ministers of his Britannic majesty,—conformably to the tenor of the note, which they addressed to Messrs. Monroe and Pinkney, and to their declarations in parliament—did believe that the emperor of the French would suffer the decree of Berlin to fall into inactivity or grow obsolete, its operation for four years past upon the commerce of England, must have cruelly defeated their hopes. It was but natural on the other hand, for the emperor Napoleon to think, that the English ministry would themselves feel the danger of their doctrine, and that neutrals looking to the source of these disastrous measures, would, in order to avert them, claim the enjoyment of their rights. *Therefore it was that the American vessels taken under the Berlin decree, were provisionally sequestered. The court of prizes did not condemn them until proof was had, that the government of the United States would no longer pursue the redress of its grievances against England, and sacrificed its interests to the fear of a rupture.*"

"The Milan decree is but a rigorous consequence of the

British orders in council of the 11th November. The submission of neutrals to the latter, rendered it necessary to view them as having renounced the freedom of their flag and as having become the subjects of England. Notwithstanding these orders, negotiations were continued between Mr. Monroe and Mr. Canning. The British minister however gave it early to be understood what were the views of his government with regard to the issue of the negotiation; he insisted upon the right of search, and of impressment, at least in the case of merchant ships."

"A negotiation was at the same time carried on in Paris, the object of which was to procure the revocation of the Milan and Berlin decrees. But the negotiators were less embarrassed. As there had been no injury done, there was no reparation to be made. The answer to be given to the demand of the American minister was always peremptory. France persisted in asserting the same principles, but announced her determination not to act upon them, until after England had made on this head the satisfaction which was due to all Europe. Thus the letter of the minister of exterior relations to General Armstrong, of the 15th of January 1808, recalled the assurances which France had given of her respect for the independence of flags; it showed that the Berlin and Milan decrees were but reprisals; it demonstrated clearly that the last orders in council were a real declaration of war against the Americans; and *from a most astonishing sentiment of moderation*, it gave the assurance, that, until the decision of the American government on so important a point was known, nothing definitive would be done, in relation to the American vessels which had been brought into French ports, *where they would remain only under sequestration.*" P. 179.

"During these discussions, whether it was that the president of the United States had secretly *received intelligence of the British orders in council, or that the increasingly vexatious conduct of the British cruisers and the evasive answers of the ministry as to the satisfaction demanded, had produced greater irritation, the senate and house of representatives enacted* THE ACT OF EMBARGO, *a measure of inertness* (MESURE D'INERTIE), *more dangerous perhaps to commerce than an open war, but more conformable to the genius of the American people, and supportable because it was supposed transitory.*"

"In consequence of the respect which France has always professed for the independence of neutrals, she did not take offence at this measure of the embargo. *Moreover, the majo-*

rits of the American consuls charged with the notification of the act to the merchants of their own country, expressed themselves in such a way as to leave no doubt of the primary cause of this measure."

We shall now proceed to what is called, the *conclusion* or summary of consequences; the most important part of the work for the American reader.

"There results from the series of facts and documents exhibited in this Memoir, a body of consequences which it is important to recal to the attention."

"England has for a long time past laid claim to the empire of the seas: she has pushed her pretensions from the sovereignty of the channel, to the dominion of the ocean."

"France has refused to acknowledge this maritime sovereignty;—she has contended for the independence of flags."

"The world has seen a constant opposition in the principles of maritime legislation adopted by one and the other power, with respect to neutrals."

"France has recognised, even before the proclamation of the armed neutrality of the north, the principle, that "*the flag covers the merchandise.*" This principle, *from which all the rights and advantages of neutrality are derived*, has been constantly rejected by England as subversive of her naval power; and from this rejection result the rights of search, of impressment, in fine, all the arrogant pretensions of an oppressive system."

"Whenever neutral powers have raised complaints, urged remonstrances, formed alliances, for the defence of their common rights, and in order to cause the independence of their flags to be respected, they have found in France a friend and an auxiliary. She has always countenanced their principles in a most amicable manner; she has proclaimed them in her public acts; she has recognised them in her particular treaties with the weakest powers; she has made common cause with all, and has always taken up arms in their quarrel. England, on the contrary, whenever a similar league has been in contemplation; a league of principles, of independence, or of the rights of neutrality; has proclaimed the most contrary maxims and advanced the most hostile pretensions."

"France has never deviated from the principles she had adopted since the end of the seventeenth century. England has successively introduced into a system of law adapted to her interests, interpolations which have aggravated the condi-

tion of neutrals, in a progressive manner, from 1756 down to our own times."

"From this conflict of opinions and interests there have resulted violations of public law and vexations of every kind with respect to neutrals;—on the part of England, from system;—on that of France from a principle of retaliation. The restrictive measures of the one were naturally developed or multiplied in the same proportion, as the oppressive measures of the other. France, however, cannot reproach herself with such acts as the attack upon the *Modeste* frigate, upon the *Chesapeake*, &c. She has injured the commerce of neutrals from the necessity of consulting her own preservation, while England has violated, and continues to violate their rights, for the purposes of monopoly and maritime dominion."

"The one acts on the defensive;—the other strives to govern."

"In this state of things, neutrals claim from the two belligerent parties the redress of their grievances, as if they had equal cause of complaint against both. The United States offer to withdraw the bill of *non-intercourse*, to open their ports, and to resume their commerce in favour of France, if she will repeal the decrees of Berlin and Milan; or in favour of England, if she consents to withdraw her orders in council."

"*On a superficial view, this proposition would appear equal; but when examined narrowly, it is quite otherwise: it renders the condition of the two belligerents altogether unequal;—it does not settle the previous question:—it suspends the dispute;—it would bring back things to the same point;—it satisfies the neutral for the moment; but prepares for her an eternal bondage.*"

"It would undoubtedly answer the purposes of England that the emperor *Napoleon* should repeal his decrees of Berlin and Milan. She would find herself quietly reinstated in possession of the old rights she had arrogated to herself;—in the enjoyment of the tyrannical measures which she had pursued before the enactment of the Berlin decree; she would employ the flag of neutrals to inundate the markets of the continent with her commodities; she would impress their sailors in order to man her fleets;—she would be content to use a few frigates to realize the blockade of two hundred leagues of coast; lastly, she would find *in the weakness of France*, and in the condescension of neutrals, means of prolonging the war, and of perpetuating her dominion."

"*As regards France*, the revocation of the Berlin and Mi-

lan decrees presents results diametrically opposite; it would keep French ports either open or shut according to the caprice of the British council; it would lead to the immediate ruin of her manufactures; it would protract an unequal contest; it would subject her commerce, her industry, her agriculture, to the cupidity of a speculating enemy; in a word France would find herself placed by that revocation, in a position worse than that in which she stood in 1806, even from the impression which she would give to the universe of her want of firmness, or of her impotence."

"*Considered in reference to neutrals*, this revocation would conduce as little to *their* interests: it would put them for the moment in possession of an advantageous brokerage (*courtage advantageux*)—for the mercantile jealousy of the English would allow but that:—but they would purchase this trivial advantage at a very dear rate. Their situation not being intrinsically bettered, they would remain exposed to the inconveniences and injuries of the pretended rights of search, of impressment, and of blockade: they would submit implicitly to the vexations and depredations which they have acknowledged to be incompatible with their independence and their honour."

"It remains then clearly demonstrated that England alone would gain by the *simple and absolute* revocation (*revocation pure et simple*) of the imperial decrees *and of the orders in council.*"

"But, as in this controversy, an equal and complete satisfaction is due to all the parties interested, *other compensations* must be sought after."

"*The question then is not confined to the orders in council and to the Berlin and Milan decrees.* It must be carried farther back, and discussed elementarily; we must remount to first principles, and fix the limits within which the rights of belligerents are to be circumscribed."

"France has manifested more than once ideas honourable to her policy, and founded upon a sense of universal justice. She could have wished to dry up the source of commercial jealousies;—to stop the effusion of blood;—to subject maritime war to the rules adopted on land;—to limit this scourge to the inevitable evils which follow in its train;—to rescue peaceful commerce from its depredations and severities;—to abolish the capture of merchant vessels, and to cause a neutral ship to be respected as an independent territory. These generous ideas are founded in good sense and conformable to the true in-

terests, if not of all governments, at least of all reasonable men; but if these generous ideas are not as yet to be considered in any other light than as a dream, we should at least return and re-adhere to the principles the least removed from them; to those which are evidently just, and of more general interest; such as those of which the solemn promulgation in 1780, and 1801, united the suffrages and sanction of all the powers of the continent."

"Let not England then offer to France a participation in rights wrested from weakness, and exercised by violence. France rejects them, and if she were capable of retracting her principles, the application of these injurious rights would soon give rise to new pretensions;—and from violence to violence, from reprisal to reprisal, we should be brought back inevitably to the very point of exaggeration at which we now are; for, it must be repeated, the violations of public law to be remarked in the Berlin and Milan decrees and the British orders in council, flow essentially from the oppressive system *antecedently* exercised by England."

"There is then no durable or *possible* agreement, until the fundamental principles of maritime jurisprudence are fixed and acknowledged."

After reading such language as the foregoing from the mouth of the French government itself, can the American people and their rulers be any longer at a loss to know, whether it has or has not repealed, or whether it ever will repeal, its decrees, conformably to the spirit of our overture of May? Can they mistake the views of the French government on this subject, after being so distinctly told, that there is a *previous question* to be decided before the revocation of the Berlin and Milan decrees, *although accompanied by that of the orders in council*, can be considered by France, in any other light than as eminently prejudicial and disgraceful both to her and to neutrals; that this previous question is no other than the recognition by England, of the doctrines proclaimed by the armed neutrality in 1780 and 1801? Can a doubt now linger in the breast of any of our readers, as to the terms upon which alone, our national independence will be treated even with a semblance of courtesy by the French emperor, or our commerce cease to be obnoxious to all the outrages, whether in the form of edicts or of practical violence, which it may be in his power to commit? But all comment from us must be needless. The Memoir speaks too strongly for itself.

We cannot however, terminate this article, without previously adverting to the manner, in which our relations with England, must be affected by the doctrine maintained in this Imperial Manifesto, and by the more recent declarations of the French Ruler, upon which we have animadverted, in the first part of the present Number. They not only constitute a complete and mortifying refutation of all the arguments, which have been, on the part of our government, so peremptorily and laboriously urged, to prove the repeal of the French decrees, but disable us from taking this ground now, or at any time hereafter, in our demands for the abrogation of the Orders in Council. The British cannot, in the teeth of the contrary declarations of the French emperor, consent to entertain even the supposition of the repeal of his decrees, nor accept the plea of a contract between France and the United States, bottomed upon our act of congress, as the justification of our non-intercourse. They can no longer view, nor can we, even with a shadow of plausibility, represent this measure in any other light, than as the repetition of an old experiment, to coerce or intimidate them, into an abandonment of their system of blockade, or at least, as an effort on our part, independent of any proceedings on that of the French government in reference to its decrees, to place ourselves beyond the sphere of the latter, agreeably to the instructions to that effect contained in the letters of Cadore, the speeches of the emperor, and the comments of the Moniteur.

If the British regard our non-intercourse in the first point of view, they will then, in all probability, consider their honour as staked on their inflexible adherence to the present system of blockade, as long as we persist in our scheme of coercion or intimidation. Further:—whichever of the two characters may be ascribed to it by us, or by the British, they must be compelled to reject, and we to abandon, the assumption hitherto the burden of our Executive song,—that we act with perfect impartiality towards the two belligerents. If, while we are compelled to acknowledge that the "unrighteous edicts" of France have undergone no change, we should continue to maintain with her the relations of friendship, and to open our ports to her manufactures and her armed vessels, and nevertheless pursue the very opposite course with Great Britain, on the ground of her perseverance in her Orders in Council, we obviously forfeit all pretensions to impartiality:—we might almost say, to neutrality. In this case Great Britain could scarcely consider our attitude as other than hostile, and might imagine herself, on this ground alone, bound in honour,

to maintain her orders, however unjust in their origin, or evidently injurious to her present interests, lest, in the event of a change in her system, while we continued to distinguish the cause of her enemy by such unmerited favour, her conduct should be attributed, to a preference of those interests over higher considerations. Under such circumstances, there can be no hope of a repeal of the Orders in Council, but on the occurrence of one or other of the following events;—either that the British should consent to sacrifice the point of honour, and yield to the coercion of our non-intercourse; or that we should replace them on a footing of equality with France, by reviving our non-intercourse against the latter, or abolishing our commercial restrictions altogether. Either of these steps on our part, might lead to a successful negotiation with Great Britain.

The revival of the non-intercourse against France is, however, a measure which our *pacific* rulers will, we presume, scarcely hazard, after the lesson heretofore given them on this subject by his Imperial majesty. They will hardly fail to remember that our non-intercourse of the 1st of March 1809, applying equally to *both belligerents*, was the alleged ground of the terrible decree of Rambouillet, and—according to the duke of Cadore—so injurious to the honour of France, that nothing short of a *declaration of war* could completely efface the stain it inflicted. This topic leads to a reflection which, if the wide difference between the characters of the two belligerents were not so universally known, might be somewhat alarming to our merchants. The French emperor considered our non-intercourse of 1809, although it extended to his enemy, as good ground of war, and made it the pretext for the confiscation of all the American property within his reach. Now, it cannot be denied, on the supposition of the French decrees being neither revoked nor modified, that our present non-intercourse is still more derogatory to the honour of the British, than was the former one to that of France. What then if the British should choose to follow the example of their enemy, and confiscate at once all our property within their grasp? No person, whatever may be the strength of his anti-anglican prejudices, can deny, but that, in so doing, they would be at least fully as justifiable, as was the Emperor of France.

Would our administration, however, illustrate their vaunted *impartiality*, by acting in this instance, as they have acted in the former? Would they submit with as much tameness to this outrage from England, as they did to the spoliations of

Bonaparte? Would they consent to an arrangement with the British, similar to that which they conceived they had made with the French Emperor, in the month of November, without exacting a previous and full restitution of the plunder? Would they, after being formally and unequivocally told by the British cabinet, that no restitution was to be expected, send a minister to the court of St. James, there to solicit it as a boon, and in case it could not be otherwise obtained, to sign with the plunderers a convention requiring the sanction of the senate, which should bind us to the ignominious condition of previously restoring the British property, which we might have confiscated for a violation, after due notice given, of our municipal laws?—We shall not ourselves answer these interrogatories, but are content to refer them to the conscience of those, who have attended to the history of our foreign relations, during any part of the last ten years.

Hereafter, and perhaps at no distant period, when reflection shall come to the aid of the public mind now confused and blinded by party collisions and false professions, there will be but one opinion on all the points we have had under discussion;—but one "grand chorus of national harmony" as to the conduct of our present rulers, particularly in relation to the Rambouillet decree. It will then be a matter of astonishment how it ever could have been doubted that, to make a proceeding of this character, a subject of negotiation in any shape, was to surrender the national honour, and to descend from the level of national equality.

Récherches Physico-Chimiques, faites sur la Pile; sur la Préparation Chimique et les Propriétés du Potassium et du Sodium; sur la Decomposition de l'Acide Boracique; sur les Acides Fluorique, Muriatique, et Muriatique Oxigéné; sur l'Action Chimique de la Lumière; sur l'Analyse Végétable et Animale, &c. Par M. M. Gay-Lussac et Thenard, membres de l'Institut, &c. Avec six Planches en taille-douce. Tome premièr et second. A Paris, 1811.

Physico-Chemical Researches on the Pile; on the Chemical Preparations and the Properties of Potassium and Sodium; on the Decomposition of the Boracic acid; on the Fluoric, Muriatic, and Oxigenated Muriatic acids; on the Chemical Action of Light; on the Analysis of Vegetable and Animal Substances, &c. by Messrs. Gay-Lussac and Thenard, members of the Institute, &c. With six copper plates. Two volumes. Paris, at Deterville's, 1811.

THE universal interest, which the voltaic pile had excited among the learned in Europe, began to abate, when it was suddenly revived by a very remarkable discovery. Mr. Davy, after having exposed to the action of the pile, the acids, salts, and many more substances, exposed the alkalies also, and was surprised by a new and unexpected phenomenon. Brilliant particles made their appearance round the negative pole, of a metallic lustre, yet extremely light, possessing the singular property of burning briskly, and of taking fire even on water. These were *potassium* and *sodium*. The report of the discovery soon spread, and was at first hardly credited. All doubt, however was soon dissipated, and the national Institute announced it publicly on the very day, when it crowned Mr. Davy, in consideration of his preceding meritorious labours. The loftiest ideas were then again conceived of the power of the pile, and the French emperor furnished the polytechnic school with the means of constructing one of extraordinary dimensions; consisting of six hundred plates, of nearly thirty five square inches surface each, together with several others of an inferior size, the direction and use of which were confided to Messrs. *Gay-Lussac* and *Thenard*.

While the piles were constructing, these gentlemen directed their attention to the discovery of a chemical process, by which potassium and sodium might be procured in larger quantities, than could be obtained by means of the voltaic apparatus. In this they succeeded completely; and thus, sure of being able to command with ease a sufficient supply of the new metals, they commenced, on the 8th of March 1808, a course of experiments on the pile, and on the nature and properties of potassium and sodium, which they continued with unabated

ardor, till the middle of this year. They published their observations and discoveries from time to time in the scientific journals of the day, and have collected and arranged them in the above work, which has just been received in this country. We were intending to review it, when we discovered, that the report of *M. Berthollet* respecting it, made to the class of mathematical and physical sciences of the Institute, and annexed to the second volume, not only contains a perfect and masterly analysis of the work itself, but is also enriched with some critical and original observations of that celebrated chemist. We have therefore thought it best to confine ourselves to a simple translation of that report, taking care only to correct a few slight inaccuracies, into which M. Berthollet appears to have fallen.

Considering the novelty of the subjects, treated of in the work itself, and consequently, in the report; the general interest which they have awakened, and the full view, given in the performance before us, of the late important discoveries in this branch of science; we are induced to think that the translation of the report will be read with avidity, by a considerable proportion of our readers. It is gratifying to remark, whilst we have to deplore the ravages, which military France spreads over some of the finest parts of the globe, and the paralyzed condition almost every where, of the pursuits of industry and commerce, that science seems as yet to rise superior to the general calamity, and to bid defiance to the broils and troubles of the times.

Report made to the class of mathematical and physical sciences of the Institute, by M. Berthollet, in the name of a committee, consisting of Messieurs Laplace, Monge, Chaptal, Haüy, and Berthollet.

The physico-chemical researches with which we are going to occupy the class, agreeably to its orders, have for their object, new substances, new properties, and new phenomena, which seem to constitute a separate science, superadded to ancient natural philosophy and ancient chemistry.

This spring of the science originated in the observations of Messieurs Hisinger and Berzelius, who showed that the voltaic electricity, when passing through a liquid, causes the component principles of the liquid, and of the substances which may be dissolved in it to separate, so that some collect round the positive, others round the negative pole—viz. the inflam-

mable substances, the alkalies and the earths round the latter; the oxigen, the acids, and the oxids round the former.

Mr. Davy seized this clue, examined the effects of the voltaic pile on compound bodies, when exposed to its action, increased the powers of the pile, and thus obtained results both brilliant and unexpected.

The novelty of these discoveries awakened the curiosity and zeal of all the lovers of science; but at the period of which we speak, it was not deemed practicable to obtain results of an interesting nature, except by employing a pile of larger dimensions, and consequently expensive. The munificence of his Majesty furnished the polytechnic school with the means of constructing this instrument, which was confided to Messieurs Gay-Lussac and Thenard.

They have collected in the work before us, the discoveries which they communicated to the Institute from time to time; they have also connected these separate details, and have added observations and arguments. The lively interest which each detached part has excited, renders unnecessary the task, which we should otherwise cheerfully execute, of bringing into view, the various merits of a work so rich in remarkable discoveries; but we have thought that it might be useful to give a short account of its contents, for the purpose of communicating to those, who do not make chemistry their particular study, and are not familiar with its processes, a general knowledge of the results which the work exhibits.

A great proportion of the experiments of Messieurs Gay-Lussac and Thenard, was made with the same intention as the researches, which Mr. Davy pursued with no less sagacity than ardour, and it must have often happened, that the same observations occurred to Mr. Davy, and his fellow-labourers. The truth of the facts has then the advantage of double testimony, while differences in the mode of explaining them give rise to useful discussions; but the claims of genius can suffer no injustice, the more particularly, as the dates of the respective discoveries have been recorded before the Royal Society and the Institute, and as they are carefully mentioned in the work of Messieurs Gay-Lussac and Thenard. If we do not, on every occasion, state what is due to Mr. Davy, our intention is by no means to depreciate the merit of his discoveries, and certainly he himself will not suppose it.

The present work is divided into four parts, which make two volumes.

The authors describe in the first place, the construction of the piles they have made use of, and particularly that of the largest,

which was composed of six hundred *pair*, equal to a surface of six hundred square metres.* They mention the manipulation which they require, and then proceed to state the experiments they made, to ascertain the causes which increase or diminish the energy of the battery, with a view to discover the circumstances, which might be either favourable or unfavourable to their future experiments. These particular investigations, however, did not promise any results important in themselves, because the subject had been nearly exhausted by Mr. Davy, and other philosophers.

They distinguish the *electric* energy of the pile, which depends on tension,† from its *chemical* energy, the effects of which appear to be chiefly owing, to the greater or less conducting powers of the liquids employed. Of this energy it was important to determine the causes. They took, as a comparative measure of the effects, the quantity of gas which is disengaged from the water in each case, and they found that this quantity, almost nothing, when the liquid is pure water and recently boiled, increases according to the mixtures with the liquid, not only in the troughs, but also in the recipient, where the wires of the platina from the two extremities of the pile, are made to meet.

Their observations on this point are, that the effect results, not only from the nature of the liquid employed in the troughs, but also from that contained in the recipient; that there ought to be a mutual relation between these two liquids, in order to obtain the greatest possible effect, and that the acids and some neutral salts produce separately, an effect much less considerable than when combined in the liquid. The length of the ends of the wires, which are made to enter the liquid, where they are brought to act on each other, contributed also to the effect. The force of the pile, estimated by the quantity of the gas obtained, is very far from augmenting in the ratio of the number of pair of disks of which it is composed; whence it follows, that in several cases, in order to produce a chemical decomposition, it is preferable to employ small piles separately, instead of combining their action; piles, composed of a great number of disks, ought however, to be used, when the object is to dissociate elements, which will only yield to a considerable repulsive force, or when the substance, to be disengaged, is easily destroyed by contact with the air, and requires therefore that the operation should be expeditious.

* The *mêtre* is about $3\frac{1}{3}$ feet.
† State of equilibrium of the electric fluid.

It was particularly important to ascertain the influence of the surface of the metallic disks. The comparison of two piles, equal in number of disks, but the surfaces of which were different, has shown that the effects are nearly proportional to those surfaces.

Mr. Wilkinson has been engaged in measuring the effects of the pile; but, instead of comparing the quantities of gas which it disengages from the liquid, in which the conducting wires are immersed, he estimated them by the length of the steel wire it was able to burn at each contact, in employing disks, either varying in surface alone, or both in surface and number. The result of these experiments was, that the lengths of wire burnt by two piles, constructed of disks equal in number and different in surface, are as the cubes of the surfaces.

The authors remark that their process has the advantage of making the action of the pile perceptible, while that of Mr. Wilkinson gives no indication of any; because a weak pile may disengage gas, though inadequate to effect the combustion of a steel wire; but they do not explain whence arises the great difference between their results and those of Mr. Wilkinson.

They terminate the researches on the mere operation of the pile, with a comparison between the chemical effects and the electric tension of a pile prepared with different liquids, and conclude from their experiments, that the chemical energy of the pile depends on its tension, on the conducting powers of the liquids by means of which it is made active,* and on the readiness of their decomposition.

After these preliminary researches on the energy of the pile, our authors proceed to the description of the results they obtained, by exposing several substances to the action of their grand battery, composed of six hundred pair of disks, and made active with water, holding in solution from nine to ten hundredths of muriate of soda, and one seventieth of concentrated sulphuric acid. But they acknowledge, that they have only been able to make a few observations with this grand battery, because the piles with small disks produced the same effects as those with large ones.†

They remark, however, that the shock given by this grand

* Vol. i. p. 43.

† The superior chemical energy of the grand battery is not in proportion to its very great degree of electric tension. It is very *transitory*, and shows itself besides, as far as it operates, more by greater *intensity* of effect, than by *new* effects; so that its practical advantages do not compensate for the vast additional trouble attending its use. (N. of Tr.)

battery is insupportable to him who receives it by immediate contact, but that it is scarcely felt in the middle of a chain, consisting of five or six people, which distinguishes it from the shock produced by the Leyden phial. Another curious circumstance is, that the commotion produced by a pile composed of an equal number of disks of much smaller surfaces, is hardly inferior to that of a pile with disks of a large surface. Notwithstanding the power of the great pile, the quantity of gas disengaged from the water, where the conducting wires meet, is scarcely perceptible, if it be very pure; but torrents are disengaged provided it contain the smallest portion of acid.

Potash and soda, exposed to the grand battery, are decomposed with rapidity, but the substance resulting from it burns as it is produced, and twenty minutes after the battery has been loaded, no further decomposition of the alkalies can be obtained, though the shocks it gives continue excessively strong, and its tension remains the same; yet this decomposition is easily effected with a pile recently loaded, of eighty pair, twenty times smaller than those of the grand battery.

Fused barytes emits sparks, which dart from its surface towards the negative wire, and disappear, forming a smoke very pungent and exceedingly dangerous to inhale. If, by means of mercury, a communication is established between the barytes and the negative wire, an amalgam is speedily obtained, which decomposes water with effervescence, and renders it alkaline; but a pile of one hundred pair, from seven to eight centimetres in thickness* is sufficient for this decomposition.

Strontia and lime gave only doubtful signs of decomposition, but they formed amalgams by means of mercury; magnesia, still more refractory, did not even amalgamate; it gave but very weak indications of decomposition.

We shall now leave the particular effects of a pile of large dimensions, in order to turn our attention to those, which may be produced by piles of an ordinary size.

The experiments which Messrs. Gay-Lussac and Thenard have made respecting the production of an amalgam, by means of ammonia and the ammoniacal salts, are deserving of particular notice, because they led them to conclusions, concerning the nature of this amalgam, different from those of Mr. Davy. This singular amalgam is obtained in two ways. The one, by exposing to the action of the pile, the carbonate or any other ammoniacal salt, in contact with a little mercury, in such a manner that the metallic wire, connected with the negative

* From 2.75597 to 3.14968 English inches.

pole, comes in contact with the mercury, and the positive pole with the salt. The voltaic action scarcely begins, when you perceive the mercury considerably increasing in size, and rapidly thickening to such a degree, as to form a solid paste, resembling the amalgamic paste of zinc. The other mode, for which we are indebted to Mr. Davy, is by pouring a liquid combination of mercury and potassium into a small cup of sal ammoniac, slightly moistened; the amalgam forms itself, thickens and takes a volume six to seven times larger than what it had before. These two amalgams, however, differ somewhat from each other; the first begins to decompose, as soon as the electric action ceases; the second has not exactly the same proportions, and is more permanent.

This compound has led Messrs. Berzelius, Pontin and Davy to an opinion well fitted to produce surprise. The analogy of this amalgam with that made by *potassium* and *sodium*, has been with them, a sufficient ground to conclude it to be a similar combination of mercury with a particular metal, the basis of ammonia, to which the name of *ammonium* has been given, ammonia being considered as a metallic oxid. The numerous attempts, however, made by Mr. Davy, have not enabled him to see the *ammonium;* when decomposing the ammoniacal amalgam he only obtained mercury, hydrogen and ammonia. He is obliged to suppose that in all his processes of decomposition, there was a little water, which, on the one hand, furnished the hydrogen, and on the other, the oxigen required by the ammonium to become ammonia. Messrs. Gay-Lussac and Thenard, on the contrary, think that the ammoniacal amalgam is a compound of mercury, hydrogen and ammonia, and they account, by the feeble condensation of the ammonia, for the expansion observed in the amalgam, as well as for its easy and rapid decomposition.

To establish their opinion, they remark, in the first place, what occurs during the preparation of the ammoniacal amalgam, by means of the muriate of ammonia in contact with mercury. So much oxigenated muriatic acid is disengaged around the positive pole, that the vapours become oppressive to respiration, whilst hardly any symptoms of effervescence are perceived at the negative pole, though a very considerable one takes place if you remove the mercury; whence it may be at once inferred that the gas disengaged in this case, combines with the mercury in the former.

They confirm this idea, by a rigorous analysis of the elements, furnished by the decomposition of the ammoniacal amalgam. In order to avoid the water, the agency of which is

requisite in the explanation of Mr. Davy, they take precautions which remove every doubt on this point, so that it is impossible not to admit with them that hydrogen is one of the elements of the amalgam, which, consequently, is a compound of mercury, hydrogen and ammonia ready formed. They determine the proportions of these elements in the two kinds of ammoniacal amalgama.

The second part of the work of Messrs. Gay-Lussac and Thenard treats of the preparation of *potassium* and *sodium*, and of the phenomena they exhibit with the various substances of nature.

It will be recollected what impression the beautiful experiments of Mr. Davy made, when he succeeded in producing *potassium* and *sodium*, and made known their principal properties, after having previously examined the general effects of the pile on substances exposed to its action.

At first it seemed reserved for the power of electricity to produce new phenomena; but Messrs. Gay-Lussac and Thenard soon made known that the mutual action of substances on each other, which is the general principle of chemical phenomena, suffices also for the production of these new metalloid substances; and the process they indicated has the advantage of being able to furnish, with ease, considerable quantities of them, which is the more important since they have become a powerful means of analysis.

This process consists in causing, by means of heat, very pure potash and soda gradually to pass through a gun barrel, filled with iron shavings and raised to a high temperature. The new volatilized substances combine, and become solid at the cooled extremity of the apparatus. Our authors enter into all the necessary details, in order to remove the difficulties which several of those have met with who tried to repeat their experiments. They insist particularly on the necessity of procuring potassium, by means of potash perfectly free from soda, and sodium, by means of soda perfectly free from potash, when the object is to establish the characteristic properties belonging to each of these substances.

What renders this precaution particularly necessary is the circumstance, that a little mixture of the one with the other produces an alloy, which has physical properties, materially different from those of the pure substances.

The alloy in which sodium has some admixture of potassium is always more fusible than pure sodium, but becomes less so in proportion as sodium predominates; the reverse takes place with alloys, in which potassium constitutes the largest portion.

Our authors find in a probable mixture of this kind, the reason for the differences between their results and those of Mr. Davy with regard to the specific gravity and fusibility of potassium and sodium.

Agreeable to Mr. Davy, the specific gravity of potassium is 0.600, that of water being taken at 1.000; and according to *their* observations it is 0.865. Mr. Davy states the complete liquefaction at $30\frac{2}{3}$ degrees of the thermometer; *they* only observed it at 58 degrees. Mr. Davy attributes to sodium a specific gravity of 0.9348, and fixes its liquefaction at 65 degrees. With our authors the specific gravity is 0.9722,* and liquefaction takes place at 90 degrees. It is to be regretted, however, that they have not confirmed this mode of accounting for the differences above mentioned, by comparing potassium and sodium, obtained from the same alkalies, through electric agency, and by means of the chemical process.

After having ascertained the physical properties of potassium and sodium, our authors proceed to the examination of their chemical action on other substances, and of the changes which they undergo themselves by this action, always reasoning on the hypothesis that these substances are metals.

They describe the curious phenomena which these metals exhibit when put in water, and they ascertain, by the quantity of hydrogen which disengages itself, the portion of oxigen which must have combined with them to reduce them to oxids, the state in which they form common potash and soda. Their evaluation, to which they have endeavoured to give the greatest possible exactness, differs very little from that which Mr. Davy had established on analogous experiments. The result of their observations is, that one hundred parts of potash contain 82.371 of potassium, and 16.629 of oxigen; and one hundred parts of soda 77.7 of sodium, and 22.3 of oxigen.

But potassium and sodium admit of several degrees of oxidation. Our authors have ascertained three of them, and the experiments they have made to establish the quantities of oxigen peculiar to these various degrees of oxidation, the circumstances on which they depend, and the principal properties of the oxids, lead to results no less interesting than novel. Oxid of potassium, at the lowest degree of oxidation, is obtained by the combustion of potassium put, when cold, in contact with air, slowly and gradually renewed. This oxid is of a bluish gray colour, very brittle, and fusible with a little

* The text erroneously has 0.9348.

warmth. It remains inflammable, though in a much weaker degree than potassium.

The second degree of oxidation is that which potassium acquires when put in contact with water.

Finally, an excess of oxidation is obtained by burning potassium, particularly when placed on silver, at a high temperature, in oxigenated gas, or even in atmospheric air. Potassium acquires by this means from two to three times more oxigen than it wants to become potash. In water it releases the oxigen it contains beyond the second degree of oxidation. Its action on combustible bodies, by means of heat, is very great; all of them, or nearly all, reduce it to the state of potash, and a great many decompose it even with a brisk light. Thus potassium produces the phenomena of combustion by the oxigen of which it deprives other substances; becomes incombustible in the state of potash, and reacquires the faculty of producing combustion and inflammation by an excess of oxigen which it yields to other substances.

The oxid of sodium, at the lowest degree of oxidation, is of a grayish white, without any metallic lustre. It is capable of affording much hydrogen with water, but less than potassium. The mean state of oxidation constitutes soda, but sodium attains the access of oxidation with more difficulty than potassium. None in that state is formed in the cold, but it is easily procured in oxigenated gas by means of heat. Sodium can acquire in this manner one and a half times more oxigen than it wants to become soda. It is fusible by the aid of heat, but less so than the oxid of potassium. Its action on other substances is analogous to that of highly oxidated potassium.

The suroxids of potassium and of sodium, may be obtained by preparing these bodies with certain metallic oxids, and principally with those which are not tenacious of the oxigen. They are also obtained by preparing potassium with nitrous gas, and with gaseous oxid of azote, and sodium with gaseous oxid of azote only. But nitrites of potash and soda will soon be formed, if the gases are in sufficient quantity, and if they are made to act on the potassium and the sodium, for a sufficient length of time.

Finally, the suroxids of potassium and of sodium, can be procured without the aid of the metalloid substances, merely by keeping common potash and soda, in contact with the air, exposed to a red heat, in a crucible of silver, platina, or earth;—one of silver is preferable because it will not be attacked—by treating them afterwards with water, the oxigen will promptly be disengaged. Analogy has led our authors to attempt the

suroxidation of the earths. Hitherto they have only discovered the property of combining with oxigen in barytes, which possesses it in a remarkable degree; but it is necessary to use that which has been freed of water.

They proceed to the action of combustible, non-metallic substances, on potassium and sodium.

Hydrogen gas does not combine with potassium, either at the common temperature or at red heat; but, between these two points there is one at which these two substances unite readily. The limited temperature at which this combination is possible, explains how it has escaped the skill of Mr. Davy.

The colour of hydrogenated potassium is gray, without any metallic appearance. At the common temperature it neither takes fire in the air nor in oxigen gas. It burns lively in them at an elevated temperature. It produces with water one fourth more of hydrogen than potassium, and even a little beyond this, which proves that, in its combination, it had received this surplus *quantity* of hydrogen.

Azotic gas indicated no action on potassium at any temperature. Carbon seemed to combine with it.

Phosphorus unites readily with potassium and sodium. The phosphurets, resulting from it, resemble the phosphurets of lime.

Sulphur forms also sulphurets of potassium and of sodium, which vary in colour, according to the degree of heat to which they have been exposed.

Phosphorated and sulphurated hydrogen gas exerts a lively action on potassium and sodium, which seize on the phosphorus and sulphur, become thereby phosphurets and sulphurets, and leave the hydrogen gas uncombined.

Mr. Davy had caused potassium to act on sulphurated hydrogen, and concluded from his experiments that this gas contained oxigen, because the quantity of sulphurated hydrogen gas, reproduced by the decomposition of the sulphuret obtained by means of an acid, is according to him inferior to the quantity of sulphurated hydrogen which was employed in the experiment. The potassium, therefore, to be reduced to potash, must have found an additional supply of oxigen in the sulphurated hydrogen.

Messrs. Gay-Lussac and Thenard, in the first place endeavoured to find the best means of obtaining the sulphurated hydrogen gas free from any admixture of hydrogen gas. They afterwards ascertained the quantity of hydrogen which made part of that compound. They did this by decomposing it by means of tin, and they found in this manner that a given vo-

lume of sulphurated hydrogen gas, contains precisely an equal volume of hydrogen gas. Having afterwards ascertained the exact specific gravity of the sulphurated hydrogen gas, they determined with precision the quantities of the two elements which constitute the gas, on the supposition that they alone compose it. This supposition they have realized by the products obtained from the decomposition of the sulphurated hydrogen by means of potassium; for, in a great number of experiments, the results of which perfectly agree, they found that the hydrogen gas, which arises from the action of the potassium on the sulphurated hydrogen, is equal in quantity to that which the potassium would have produced with water; and further, that the sulphuret which was formed, when it is decomposed by an acid, yields a volume of sulphurated hydrogen gas, equal to that of the sulphurated gas employed in the experiment.

They still further combat, by analogous experiments, the opinion of Mr. Davy, that phosphorus and phosphurated hydrogen gas contain oxigen. They show that phosphurated hydrogen gas differs from the sulphurated, by the proportion of hydrogen which it contains in a condensed state, so that it would occupy, in an isolated state, a volume one and a half times as large. The phosphurated hydrogen differs also from the sulphurated, by yielding to potassium the pure phosphorus, whilst part of the sulphurated hydrogen will combine, without decomposition, with potassium as well as with sodium.

Potassium and sodium form, with the metals, very fusible alloys, but which vary according to the quantities of the metal used, and the proportions of the two elements. These alloys decompose rapidly in the air, and by contact with water: the potassium becomes potash, and the disengagement of a quantity of hydrogen accompanies this reduction. The alloy with arsenic presents, however, an apparent anomaly. The hydrogen, found by the analysis of the arsenicated hydrogen, which is obtained in the place of the hydrogen gas, is considerably less in quantity than the hydrogen disengaged from the other alloys. Our authors show that this difference arises from the formation of hydrogenated arsenic which subtracts a proportion of the hydrogen.

Thence, they proceed to examine the action of potassium and sodium on the oxids, at the head of which they place the oxid of carbon and two oxids of phosphorus.

The oxid of carbon is decomposed by the aid of heat; the carbon is precipitated, the potassium and sodium resume the state of potash and soda. The oxids of phosphorus are also

decomposed; so likewise are all the metallic oxids, and they exhibit, in this decomposition, different phenomena, according to the proportions employed, according to the force with which the oxids retain oxigen, and according to the quantities of it, which enter into their composition. If there is an excess of potassium and of sodium, this excess combines with the reduced metal; if, on the contrary, there is excess of oxid, at a high degree of oxidation, this oxid is simply reduced to an inferior degree of oxidation.

The powerful action of potassium and sodium on the acids which had resisted all the means of analysis heretofore employed, has furnished the most important results.

The boracic acid, chosen for this experiment, should be very pure, and our authors indicate the means of obtaining it in this state. After having vitrified and reduced it to powder, it is put in alternate strata with potassium, and exposed to the action of heat. The mixture soon reddens, with a great evolution of heat, and after this the mixture is found to contain regenerated borate of potash, and a particular substance, which, disengaged from the rest, is of a brownish green.

This substance is the basis of the boracic acid, a part of which, in yielding its oxigen to the potassium, has been entirely decomposed. Our authors give it the name of *bore*.

Bore is solid, insipid, without action on tincture of turnesol and syrup of violets. It neither smelts nor volatilizes at a high degree of temperature. It is entirely insoluble, as well cold as with the aid of heat, in water, alcohol, ether, and the oils: but it burns in oxigen gas, at a heat capable of giving a cherry red to the vessel containing it. In this combustion the bore absorbs the oxigen and resumes the state of boracic acid, so that the synthetical results fully confirm those of analysis.

Our authors, having designated this basis of the boracic acid by the name of *bore*, propose to change the name of boracic acid into *boric acid*, according to the received rules of nomenclature; but if this basis, agreeable to Mr. Davy, were called boracium, the change of the established denomination would be avoided.

Bore acts with great energy on nitric and nitrous acid. It disappears and assumes the state of boric acid, disengaging at the same time a great quantity of nitrous gas and perhaps of gaseous oxid of azote, and azote itself. It produces on most of the salts, which contain oxigen, the same effect as other inflammable bodies; it even decomposes, at a high tem-

perature, the carbonate of soda, in freeing it from the carbon. It reduces most of the metallic oxids.

It was a matter of interest to ascertain the proportion of oxigen which enters into the composition of boric acid. Direct combustion could not answer this purpose, because it requires several successive operations. Our authors, therefore, had recourse to the reduction of bore into boric acid by means of the nitric acid, and they conclude from an experiment, of which however they acknowledge the insufficiency, that the boric acid contains one third of its weight of oxigen.

The carbonic acid gas is decomposed by potassium. There result from it carbon, left by itself, and potash combined with a portion of carbonic acid. The sulphureous acid gas is so likewise, and leaves a regenerated sulphite of potash, with a proportion of sulphite of potassium. The nitrous acid, and the oxigenated muriatic gas are also decomposed.

Potassium acts strongly on muriatic gas: muriate of potash is formed and hydrogen gas disengaged.

The glassy phosphoric acid leaves, when decomposed, a red phosphuret of potash.

Our authors have also observed the decomposition of the arsenic, molybdic and chromic acids. They describe carefully the circumstances, more or less favourable, to these decompositions; the products resulting from them; and the differences, exhibited by sodium, which, in general, acts with less energy than potassium.

They then describe, with the same accuracy, the phenomena presented by potassium and sodium when put in contact with the air, and the acids dissolved in water, at the temperature of the atmosphere.

After numerous experiments on the acids our authors proceed further to the action of potassium and sodium on alkaline substances.

Potassium, made to volatilize over the different alkalies, well dried, combined more or less with them. Much hydrogen gas was disengaged by its action on potash, and the mixture, resulting from it, was found analogous to oxid of potassium,* at its lowest degree of oxidation, which caused a lively effervescence with water. But little hydrogen was disengaged in the experiments made with barytes, strontia, lime, magnesia, zircon, and silex, and these different bases produced afterwards only a slight effervescence with water.

Potassium exhibited, with ammoniacal gas, phenomena

* The text has *potash*, erroneously

which deserve much attention, because they lead to an interesting inquiry concerning the composition of ammonia, and on the nature of potassium and sodium themselves, which are treated of in the progress of the work.

When potassium is made to melt in ammoniacal gas, it disappears gradually and transforms itself into a very fusible substance of an olive-green colour. The ammoniacal gas itself disappears and is partly replaced by a volume of hydrogen gas.

This operation is effected with a slight degree of heat. As soon as the transformation is completed the fire must be withdrawn. If this is not done, or, if in the course of the experiment different degrees of heat are employed, the product will be different, as is evident from a table, showing the results of ten experiments, from which it appears that the quantity of ammoniacal gas, absorbed by potassium, varies according to the degree of heat to which it is exposed; but that whatever may be the quantity of ammonia absorbed, there always results from it the same quantity of hydrogen gas, and one precisely equal to what potassium affords with water.

According as the green matter is more or less heated, a larger or smaller quantity is obtained of ammoniacal gas, or of the principles of which it is composed; but it can only be deprived of about three fifths of the quantity which the potassium had absorbed. The first fifth is disengaged at a gentle heat and without being decomposed. The second fifth will only disengage itself at a much higher degree of heat, being at the same time partly decomposed; finally the third fifth requires a still higher degree of heat and is decomposed entirely; but the gas, resulting from it, exhibits the constituent principles of ammonia in their exact proportions.

On preparing the olive-green substance with a small quantity of warm water, only potash and ammoniacal gas are obtained; and the quantity of this gas is precisely equal to that which the potassium caused to disappear, to be afterwards changed into the green substance, provided an excess of water do not retain any in solution.

Sodium exhibits with ammoniacal gas phenomena precisely analogous. The quantity of ammoniacal gas absorbed, varies in proportion to the degree of temperature; but the quantity of disengaged hydrogen gas is uniform, and always equal to that which sodium affords with water.

Most of the alkaline salts, earthy as well as metallic, were exposed to the action of potassium. By means of different degrees of heat it took the oxigen from such of them as

are known to contain any, and it was most generally converted into potash, rarely into oxid at the lowest or highest degree of oxidation. Sodium produced similar phenomena, but it required a little more heat.

A great number of experiments, the results of which are exhibited in a table, show that potassium and sodium have the property of decomposing, by the aid of heat, all vegetable and animal substances; but the confusion, prevailing in the products resulting from it, has deprived our authors of the hope of being able, by this method, to determine the proportion of the constituent principles of these substances; it has led them however to another process, of which we shall see the fortunate application in the second volume.

The third part of the work forms the commencement of the second volume, and begins the experiments our authors have made on the fluoric acid.

They have so multiplied them, and conducted them so happily, that they must have realized almost a complete history of this acid. By means of precautions, which they describe, and particularly by operating on fluate of lime, completely freed from silex, they have succeeded in obtaining the fluoric acid in a degree of purity and concentration unknown before.

It is necessary to preserve this acid well secured against the contact of the air, in which it copiously evaporates, in combining with the hygrometrical water. It exerts on water an action much more lively than the most concentrated sulphuric acid. It carbonises vegetable and animal substances; it disorganizes the skin, by mere contact, in a much more energetic and dangerous manner than the other acids; it quickly destroys glass, combines with the silex, which it extracts from it, and thereby acquires a greater predisposition to become gaseous. Hence it arises that the fluoric acid cannot be obtained in a liquid state, if the fluate of lime, used on the occasion, contain silex, except by saturating water with the fluoric gas impregnated with silex; and it must then, of course, be in a state of concentration much inferior to that of which we speak.

Potassium produces a loud detonation with fluoric acid, and it was only by causing the acid to reach the potassium very gradually that our authors were able to collect the products of its action. They obtained from it much hydrogen gas, and acid fluate of potash in the liquid state; which proves that fluoric acid, prepared with very concentrated sulphuric acid, contains a considerable proportion of water; but this acid cannot be decomposed by the process just mentioned.

It is, almost, to *Scheele* alone that we are indebted for the discovery of the fluoric acid, as well as for the knowledge of the fluates with an alkaline basis, and a metallic basis, and of the triple salts, in which silex enters as a constituent part. Our authors give a new, a more full, and more exact description of these compounds. They have subjoined the description of those, which the fluoric acid forms with the earths, unknown in the time of Scheele. We shall confine ourselves to a few of their observations.

In order to prepare fluate of glucine they mixed fluate of potash, somewhat acid, with muriate of glucine considerably acid; the fluate of glucine precipitated as it was formed, and the liquid became alkaline. The precipitated salt, having been dissolved in water by means of ebullition, gave no indication of acidity. Yttria and zircon exhibited similar phenomena. These then are compounds differing from all other salts, in which the state of neutralization continues after the exchange of bases.*

Above all, the action of boric acid on fluate of lime has given rise to interesting observations.

Wishing to obtain the fluoric acid without water, Messrs. Gay-Lussac and Thenard mixed in a gun-barrel one part of very pure and vitrified acid, with two parts of fluate of lime, also very pure. The gun-barrel is then put into a reverberating furnace, and the fire is increased slowly. As soon as the apparatus begins to become red hot, thick vapours are disengaged, which are received over mercury. This is a gas composed of fluoric acid and boric acid, which our authors designate by the name of fluo-boric acid.

This gas has a smell resembling that of fluoric gas. Like it, it attracts the hygrometric water; it reddens in the same way the blue vegetable colours, but it does not act upon glass. It carbonises vegetable and animal substances, but you may touch it without being burnt. It transforms alcohol into a true ether. It absorbs water copiously, so that it requires a large quantity to saturate it, and it then becomes a very fuming and very strong acid.

The fluo-boric acid combines with the several bases, either alkaline or metallic. It probably forms with them triple salts,

* The singularity lies in this, that, when fluate of potash and muriate of glucine, in both of which the acid predominates, are mixed, all the fluoric acid should leave the potash, to form with the glucine, detached from the muriatic acid, a perfectly neutral salt, which precipitates; though the muriatic acid is not in sufficient quantity to neutralize the potash, which causes the supernatant liquor to remain alkaline. (Note of T.)

of which our authors have not yet had leisure to examine the properties; but, by heating powerfully the fluo-borate of ammonia, they expelled from it the fluoric acid,* and had boric acid left, which made them acquainted with the composition of this acid.

Potassium and sodium burn briskly in the fluo-boric gas. There results from this combustion a solid substance, composed of fluate of potash or soda, which dissolves in water and leaves bore behind. Some appearances made our authors conjecture that this bore was mixed with a small quantity of the radical of the fluoric acid.

Pursuing their researches on the means of decomposing the fluoric acid, they convinced themselves that it was impossible to separate it from its base, without administering a substance with which it might enter into combination, such as water, boric acid, or silex. But that which contains water will not answer for the experiments, by which it is intended to decompose it, and they found the combination with silex in the gaseous form preferable, for their purpose, to fluo-boric gas.

Potassium is not attacked in the cold by *fluo-silicious* gas;† but, if melted in the midst of this gas, it burns briskly: hardly any hydrogen gas is disengaged, but a solid substance is formed of a brown colour.

When this substance is put in water, a quantity of hydrogen gas is disengaged from it very slowly; about equal to that which potassium would have yielded rapidly. When it is exposed, very hot, to the contact of the air, it takes fire and burns briskly. Our authors made it the subject of several experiments, from which they conclude that it is composed of acid fluate of potash, of silex, and of a combination of the radical of the fluoric acid with potash and silex; but they have not been able to remove all doubts as to the existence of this radical, and to verify its properties, because they could not obtain it in an isolated state.

Sodium presented analogous phenomena; but the solid substance, resulting from its action, disengages with water much more hydrogen than the former.

Our authors proceed to other considerations not less interesting, and, in the first place, discuss the question,—Which are

* And the ammonia.—The authors observe that the fluate of ammonia obtained in this process of sublimation was not pure, but still contained some borate of ammonia, and they remark as a singular circumstance that the salt, so sublimated, was less soluble in water, and had less taste than before. (Note of T.)

† We believe this to be the best term for "gas fluorique silicé."

the gases capable of holding water in combination, and whether there be any necessarily devoid of hygrometric water?

In order to recognise the *hygrometric* water, they took advantage of the property they had discovered in fluo-boric gas, of seizing on the hygrometric water of the gases, and forming with it a thick vapour which precipitates.

Indeed, the fluo-boric gas preserved all its transparency in gases dried by efficacious means; but it is sufficient to introduce into them one fiftieth of a moist gas to cause the immediate formation of a perceptible cloud.

They put successively each gas in contact over mercury, with the various substances which absorb moisture, and introduced, after a little time, fluo-boric gas. By this means they discovered what substances possess the quality of taking off all the hygrometric water; but there are gases, in which, without any previous desiccation, the fluo-boric acid gives no indication of hygrometric water: such are those which are extremely soluble in water. They remark, that these gasses cannot contain even the smallest quantity of water; because, as soon as they come into contact with water, the latter absorbs them. Such are in particular the muriatic and the fluo-boric gas.

Even the muriatic acid gas, extracted from the water which held it in dissolution, and collected in a bell over mercury, did not form the slightest cloud with fluo-boric gas.

Nor did the same gas when extracted from muriate of soda, by means of sulphuric acid, and introduced into a little phial, to which a curved tube had been previously fixed, which was plunged into a refrigerant mixture, deposit any water in that tube, though a great quantity of the gas passed through it.

Several phials were filled with acid muriatic gas, prepared in a manner that it could not be otherwise than perfectly free from water; a single drop of water was then put into each phial, but so far from evaporating, it became larger, because it condensed some of the acid gas.

Analogous experiments gave the same results with fluo-boric gas.

Our authors then proceed to examine whether there be any gas holding water in a state of *combination*.* They directed their attention to the sulphurated hydrogen gas, the carbonic acid gas, the sulphureous acid gas, the nitrous acid gas, the

* The reader will observe the difference between gas *hygrometrically* moist, and gas holding water in a state of *combination;* this combination may exist, and when it belongs to the chemical nature of the gas, will exist, though the gas be perfectly *dry*. (Note of T.)

gaseous oxid of azote, the fluo-boric, the fluo-silicious, the muriatic and the oxigenated muriatic gases;* and they prove, from the circumstances attending their formation and decomposition, and from the products of the action on them of other substances, the nature of which is well ascertained, that, among all these gases, it is in the muriatic gas alone that such a combination can be admitted. They rendered the existence of this water perceptible, by combining the muriatic gas with the vitreous oxid of lead; for there resulted from it muriate of lead, and muriatic acid, containing much water.

Several experiments then go to establish that this water is essential to muriatic gas; so that it cannot be disengaged from any compound it may have formed, except by furnishing it again with the water of which it was deprived in this combination, or allowing some to be formed in the process. We shall state these experiments, equally curious in their immediate results, and in their consequences.

A mixture of equal parts of muriate of silver and vitreous boric acid, exposed to a great heat, produces no disengagement of muriatic gas; but if steam is made to pass over the mixture, great quantities will be evolved with a much inferior heat.

A mixture of charcoal, which had been calcined in a smith's fire, and muriate of silver, yielded at first a little muriatic gas; but it soon ceased to be evolved, though the heat was violent. But, when water is added to the mixture, the muriate of silver is quickly decomposed. If the experiment is made in a tube of porcelain, no muriatic gas at all is obtained at first; but when steam is introduced, a large quantity is evolved immediately.

The small quantity of muriatic gas obtained in the beginning of the experiment, even when the most strongly calcined charcoal is employed, shows that this charcoal still contains a little hydrogen, which forms water with the oxigen of the oxid of silver; and since carburet of iron, or plumbago, substituted for the charcoal, causes the like disengagement of muriatic gas, our authors concluded from it, that it also contains hydrogen. What confirms this, is the circumstance, that when a hydrogenated charcoal is made use of, muriatic gas is readily obtained, and the muriate of silver is reduced.

Since water is a necessary ingredient in muriatic gas, let

* The authors say that they confined themselves to the examination of these gases, because, of all that are known, these alone are soluble in water; and because they take it for granted (qu'on admet) that all those, which are insoluble in water, can only contain it in a hygrometric state. (N. of Tr.)

us see what occurs when muriatic oxigenated gas passes into the state of muriatic acid.

Our authors prove, that the substances which appear to exert the strongest action on oxigen, are incapable of decomposing very dry oxigenated muriatic gas, unless they can furnish water, or hydrogen which will form water. Thus, in causing oxigenated muriatic gas to pass over strongly calcined charcoal, only a small proportion of the oxigenated muriatic gas was transformed into muriatic gas in the beginning of the operation; and when the hydrogen, still retained by the charcoal, was exhausted, the oxigenated muriatic gas experienced no further change, though the temperature was very high. On the contrary, hydrogenated charcoal decomposed it readily.

This property of the muriatic acid being ascertained, it is easy to judge, in what cases the muriatic acid will be disengaged from its combinations, and in what it will remain fixed.

This power of water over muriatic acid is even so great that earthy and dry muriates, which cannot be decomposed at the highest temperature by means of boric acid, or the acid phosphate of vitrified lime, are decomposed by water alone, at a temperature under cherry red.

This action of water, in cases in which it should not be found sufficient to effect the decomposition of a muriate, may be aided by the action of another substance on the base. Our authors have made on this subject, an observation which may admit of useful application. They found that steam disengages much muriatic gas from a mixture of two parts of very fine sand, and one part of muriate of soda. Alumine, glucine, and in general all the bases which bear affinity to soda, act in the same manner. Muriate of silver, when exposed to red heat in a porcelain tube, in which steam is introduced, gives out much muriatic gas; not because water disengages it by its action alone, but because the oxid of silver vitrifies at the same time with the tube of porcelain.

The muriates of mercury exhibited with calcined charcoal, with hydrogenated charcoal, and with the boric acid, phenomena perfectly analogous to those which were obtained with the muriate of silver.

It was not sufficient to have established, that a certain quantity of water, or of its constituent principles, must be admitted in the muriatic gas; it was also important to ascertain the proportion of this water.

For this purpose our authors, in the first place, ascertained with great care the proportion of oxigen, contained in oxid of silver. They fix it at 7.6 of oxigen to 100 of silver.

They then introduced into a phial, into which a certain weight of oxid of silver and of water had been previously put, a certain quantity of muriatic gas. The difference between the weight of this gas, and that of the acid fixed, without water, with the oxid of silver, is owing to the water, abandoned by the muriatic acid.* It results from this experiment that muriatic gas contains about one fourth of its weight of water.

This result was confirmed by the products of the decomposition of the oxigenated muriatic gas by means of hydrogen gas. But, in order to ascertain these products, it was necessary to succeed, by a very delicate process, in determining the specific gravity of the oxigenated muriatic gas, which was found to be 2.470; the proportion of oxigen contained in it, which is equal to half its volume; and the quantity of hydrogen, necessary to change it into muriatic gas, which is an equal volume. By this decomposition a volume of muriatic gas is obtained equal to that of the two gases, from which it originated, without any deposition of water; which, moreover, accords with the specific gravities of these several substances. It follows from this, that the oxigenated muriatic acid gas contains precisely the quantity of oxigen necessary to produce the water, which is required for the formation of muriatic gas.

Since the muriatic acid cannot exist in the state of gas without water; and since it always makes part of some compound,

* This passage, being very concise, is rather obscure.—They put a certain weight of oxid of silver perfectly dry, into a phial. They also put into it a certain weight of pure water. They then converted this water into muriatic acid by the introduction of muriatic acid gas; and by reweighing the whole together, ascertained by the increase of weight, how much muriatic acid gas had combined with the water, to convert it into muriatic acid.

After the muriatic acid had had time fully to act on the oxid of silver, they decanted the supernatant, clear liquor, from the precipitate, and found it to be nothing but pure water, which gave no indication of acidity, and, on evaporation, left no residue whatever.

The dried and melted precipitate, of course, was a combination of all the oxid of silver employed, with all the muriatic acid gas employed, and ought to have weighed *as much* as the two, separately, previously to their combination, if nothing had been lost in the process.

It weighed however *less;* and this loss of weight, the authors say, can only have arisen from the quantity of water, which was combined with the acid gas, and abandoned by it on entering into combination with the oxid of silver. It therefore indicated that quantity.

The amount of oxigen, combined with the oxid of silver, and required to make silver soluble in the acids, as stated in the preceding section of the text, was a result obtained by the authors *incidentally,* in an experiment, made to convince themselves that their oxid of silver was perfectly *free from water;* but it is not immediately connected with the experiment under consideration. (Note of T.)

whenever it contains none; it follows that the oxigenated muriatic gas cannot be decomposed, except by substances, which, like the metals and sulphur, are capable of absorbing both its constituent principles; or, by such as are capable of combining with muriatic acid in the dry state; or, finally, by such as contain water, or hydrogen, which can form water with the oxigen of the oxigenated muriatic gas.

It is known, indeed, that the metals absorb the oxigenated muriatic gas, and are changed, by this means, into metallic muriates; whence it must be inferred that it contains exactly the quantity of oxigen requisite to convert the metals into muriates.

Sulphur, in combining with the oxigenated muriatic gas, forms a liquid composed of sulphur, oxigen, and muriatic acid, which was discovered by Thompson; and our authors show that this same compound is formed, with more or less rapidity, when metallic sulphurets are thrown into oxigenated muriatic gas.

Phosphorus and the phosphurets produce analogous phenomena and liquids, of which our authors describe the properties in the course of the work.

The decomposition of the oxigenated muriatic acid, by means of substances capable of entering into combination with dry muriatic acid, has given rise to remarkable phenomena. If this gas is made to pass over lime in a tube of porcelain, and if this tube is made red hot, a great quantity of oxigen gas is evolved; only a small proportion of the oxigenated muriatic acid gas escapes decomposition; no doubt because it has not come into contact with the lime. After the experiment dry muriate of lime is found in the tube. Magnesia, well dried, has also decomposed the oxigenated muriatic gas; and other earths, as well as some metallic oxids, capable of combining with muriatic acid without water, must have the same property.

We come now to the decomposition of the oxigenated muriatic acid, which is effected by the agency of water, and the hydrogenated substances.

If steam and oxigenated muriatic gas are made to pass together through a red hot tube, liquid muriatic acid is obtained and oxigen gas is evolved.

If oxigenated muriatic gas is put in contact with hydrogenated substances, it is decomposed; as has been seen with hydrogen gas and hydrogenated charcoal. It is decomposed in the same manner by sulphurated, phosphurated, carburated,

arsenicated hydrogen gases, and by all vegetable and animal substances.

Sulphureous gas, oxid of carbon, nitrous oxid, oxid of azote, well dried by means of lime, and mixed with oxigenated muriatic gas, underwent no alteration by the action of light; but, on adding a little water, the oxigenated muriatic gas was promptly decomposed. The same took place with bore, the sulphites of lime and of barytes.

Our authors, after having examined the effects of the action of oxigenated muriatic gas in the various processes, make some observations concerning the nature of this gas itself.

When they had, formerly, observed that oxigenated muriatic gas was not decomposed by charcoal freed from hydrogen, they concluded from this fact, and from some others, that this gas might be considered as a simple substance, and that the phenomena it exhibits would admit, on this hypothesis, of a sufficiently satisfactory explanation. "*We shall not however*," said they, "*attempt to defend it, because it appears to us they can be explained still better by considering the oxigenated muriatic acid as a compound substance.*" This idea, which they stated in the month of February 1809, has since been maintained, in particular by Mr. Davy.* They repeat, in a summary manner, all the facts established by observations on the action of oxigenated muriatic gas. They show how they can be explained, and especially those belonging to Mr. Davy, on either hypothesis; and after having balanced the two explanations, they persist in thinking, that these facts are better explained when the oxigenated muriatic gas is considered as a compound substance.

Indeed, to regard it as a simple substance, it becomes necessary to suppose the common muriatic acid to be a compound of hydrogen and oxigenated muriatic acid; the metallic muriates to be of a nature totally different, not only from the other metallic salts, but from these muriates themselves, when they are dissolved in water;—to suppose that lime and magnesia yield the oxigen, the existence of which in them some experiments cause us to admit, agreeable to another hypothesis, in order to combine, in the metallic state, with oxigenated muriatic gas; and that this gas combines with the oxigen it receives from the water, in order to attain the state of suroxigenation; and even these suppositions are not sufficient for all the explanations wanted.

On the other hypothesis, that is, admitting oxigen to be ca-

* Viz. That of the oxigenated muriatic gas being a simple substance.

pable of combining with muriatic acid, as it combines with the metals and the combustible bodies, all explanations become natural and perfectly analogous to those of other facts, in which a transposition of oxigen takes place from one substance to another. The new observations only show that the transformation of oxigenated muriatic into simple muriatic gas requires that the latter should receive a supply of the proportion of water essentially necessary to it; which perfectly accords with the power of combination, which exists to a high degree in the muriatic acid.

It may not be useless to remark here, that, when we are examining the nature of substances; the mode in which they form combinations; and the changes which may take place in their component elements, or in those resulting from their decomposition; it is easy to multiply hypotheses: but those in which the analogy is the most perfect, and which require the fewest suppositions to link the facts, so that the mind may readily seize their bearings, should be supported in preference, without confounding their application with the facts themselves, established by the rule and scale, and with the inferences to which they immediately lead.

After these observations our authors describe the properties of a liquid they formed, by means of a combination of phosphorus, muriatic acid and oxigen, analogous to that produced by Thompson, by the combination of sulphur with oxigen and muriatic acid.

They then speak of the agency of water in the decomposition of several substances, and in particular of the salts.

It has been shown that the muriatic acid cannot be separated from the bases which retain it free from water, except by means calculated to furnish the water which is indispensable to the muriatic gas; so that water acts, in the decomposition of the muriates, by its tendency to combine with the muriatic acid. Other acids, such as the nitric, the sulphuric and the fluoric, require also water to be able to exist in the liquid state. They cannot, therefore, be separated from the bases, which retain them free from water, unless it is furnished. But there are other salts, the acid of which does not require water, and the decomposition of which, nevertheless, requires the action of water; or, at least, is effected much more readily by its influence. Such are the carbonates. Our authors show, that in these cases the water owes its efficacy to its tendency to combine with the bases themselves.

The agency of light in chemical phenomena had, for a long time, arrested attention. Count Rumford had proved, by the reduction of gold and of silver, put in contact with charcoal,

ether and the oils, that the light of the sun produces effects similar to those of a heat of one hundred degrees; but the decomposition of the oxiginated muriatic acid, which takes place through the agency of light, and not through that of a moderate degree of heat, seemed, as well as the decomposition of the nitric acid, to forbid the general application of the principle established by Rumford.

Messrs. Gay-Lussac and Thenard have removed this difficulty. They prove that a mixture of oxigenated muriatic gas and of hydrogen gas remains unaltered in the dark; but that the oxigenated muriatic gas decomposes slowly in common day light;—that an instantaneous detonation takes place, if the mixture is exposed to the rays of the sun; and that a substance heated from 135 to 150 degrees of the thermometer produces the same effect.* The compound hydrogen gases furnished the same results; deposing at the same time a more or less considerable quantity of charcoal.

Oxigenated muriatic gas, which is made to pass, together with steam, through a tube heated to a temperature somewhat higher, is also decomposed: whence it must be concluded that light, when it decomposes the oxigenated muriatic acid, acts in the same manner. Concentrated nitric acid decomposes at a temperature even inferior to this. Its decomposition, by means of light, must therefore be accounted for in the same way. Our authors show that the same explanation must be alike applied to the changes, which some metallic oxids experience when exposed to the light.

Finally, they prove that heat produces in vegetable and animal colours the same changes as light. Whence it results, that we may judge of the manner in which a dyed stuff, when in use, will resist the action of light, from the changes it undergoes when exposed for an hour or two to a heat of 150 to 200 degrees. But the decomposition of the colouring particles is accelerated by steam.

Finding it necessary, for the purpose of establishing several points of inquiry, to know exactly what proportion of water is still retained by potash and soda when prepared by means of alcohol, our authors ascertained it in three ways. By the saturation of these alkaline bases with carbonic acid, which expels the water; by their combination with silex; and by the combination of a given weight of potassium and sodium with sulphuric acid, the former having been previously reduced to potash and soda by means of oxigen gas. They adopt as the

* A heated brick was plunged into the mixture. (Note of T.)

result, that potash retains one fifth of its weight of water, and soda one fourth. The different methods, however, which they employed, do not give results sufficiently alike to allow this conclusion to be considered as rigorously exact.

They conclude the kind of researches we have hitherto noticed, with a discussion on the nature of potassium and sodium; and this discussion cannot fail of exciting much interest at this moment.

When Mr. Davy made the discovery of potassium and sodium, he considered them as metals; and founded on this supposition, which we shall call the *theory of the metals*, the solution of all the phenomena they exhibited.

Another opinion was started, according to which, potassium and sodium are considered as hydrurets: we shall denominate it the *theory of hydruets*. Our authors at first regarded this as the most probable, but their subsequent experiments determined them in favour of the first.

By the first theory it is supposed that, when potash is exposed to the action of voltaic electricity, the oxigen, which caused it to be in the state of an oxid, is separated from it, and translated to the positive pole, whilst the pure metal remains under the influence of the negative pole.

In the second, it is thought that the oxigen of the water, which happens to be united with the potash, is conveyed to the positive pole, whilst its hydrogen combines with the potash, freed from the water, in the same manner as it effectually combines with the tellurium, arsenic and azote. This hydrogen, when held in solution by water, forms, by the action of voltaic electricity, ammonia, which is a real hydruret.

We may cite, as another instance of a similar compound, the amalgam of ammonia, mercury, and hydrogen, which bears much resemblance to potassium and sodium in metallic appearance and lightness.

Our authors state the grounds which seem to support each of these two theories; and it is only after having weighed them against each other, that they adhere to that of the metals. We believe it will be auxiliary to their views, if we suggest some few considerations, connected with the theory they thought themselves obliged to adopt.

It is not that we attach much importance to the choice of either of the two theories. Both afford satisfactory explanations of the same facts, and among these facts there is none which can entirely decide the question; but it is useful to obviate the exaggerated consequences which some persons might

be disposed to deduce from either theory, if admitted as a physical truth.

The experiment, by which a quantity of potash is formed through the combination of a given weight of oxigen with potassium, appears to us one of great importance in favour of the theory of the *metals*.

The weight of this potash is equal to that of the potassium employed, and of the oxigen absorbed; and it produces, for instance, with the sulphureous acid gas, which does not contain water, a sulphite in which none has been discovered upon analysis. Our authors, in order to establish this fact, made use principally of the kind of potash which they consider as in the third degree of oxidation.

At first, it is natural to conclude, without hesitation, from this experiment, that potassium, a simple substance, forms potash, with the addition of oxigen; and it is on similar results that all the theory of modern chemistry rests; but potassium has properties, perhaps not easily reconcileable to this hypothesis, and more naturally explained, in supposing it to be a compound, analogous to several others we are acquainted with, and which are formed under similar circumstances. We shall have occasion to return to the fact in question.

Among the principal grounds in favour of the theory of the *hydrurets*, our authors enumerate,

1. The density of potassium and sodium, inferior to that of water, and consequently still more inferior to that of potash and soda. At the same time they observe, that it cannot be proved by any conclusive argument, that the dry alkalies possess a greater density than water; that great specific gravity is not an essential characteristic of metals; and that oxigen, though it diminishes the specific gravity of the metals, which contain much of it, may, on the contrary, increase the specific gravity of the alkaline metals, which contain but little.

There exist in nature none other than isolated metals: the general ideas we form concerning their properties, are only an abstract of our observations on each. We cannot, indeed, pretend, that there may not exist simple substances, which, with a great specific lightness, deserve, notwithstanding, from their other qualities, to be classed among the metals; yet, when we are to determine whether a substance is to be considered as simple and metallic, which suddenly invades a property belonging to all metals hitherto known, this dissimilitude has some weight.

The specific lightness of potassium, to which we shall par-

ticularly direct our remarks, presents a difficulty much more serious.

It cannot, indeed, be rigorously ascertained what is the specific gravity of pure potash, when it is supposed that it is only known in a state of combination: it is, however, highly probable that it is much superior to that of water. It has been found that the specific gravity of the carbonate of potash is to that of water as 2, 3 : 1; but it cannot be supposed that carbonic acid should acquire, on condensing itself, a specific gravity materially different from that of water; the less so, as one half, of all the acid combined, adheres very little to the base of the carbonate: nor can it be supposed that the $\frac{17}{100}$ of oxigen, which must combine with potassium to constitute potash, should so much exceed the specific gravity of water as to produce a perceptible effect. It would therefore result from these data, that the specific gravity of potassium, such as it is presumed to exist in the compound called carbonate of potash, should nearly approach that of this salt itself, viz. 2, 3 : 1; but in the state in which we know it, it has scarcely one third of this specific gravity. There is no instance of such an augmentation of specific gravity in a solid substance, entering into combination.*

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* The argument of M. Berthollet, if we understand it right, is this:

The specific gravity of carbonate of potash to water is as 2, 3 : 1.

But carbonate of potash is potassium, combined with oxigen and carbonic acid.

The specific gravity of oxigen, condensed, cannot well be presumed to be much greater than that of water.

Nor can the specific gravity of carbonic acid be presumed to be much greater.

There ought to be, therefore, only a trifling difference between the specific gravities of carbonate of potash and potassium.

But in fact the difference is two thirds; which seems inconceivable.

This argument, however, appears to us so far objectionable as M. Berthollet seems to think, that the accession of oxigen and carbonic acid to potassium can only be considered to *count*, in the increase of the specific gravity of the compound, for as much as their own specific weight, in the condensed state, *exceeds that of water*. This would certainly be correct, if we were to presume that the *volume* of the compound increases, in exact proportion, with the increase of matter; but this presumption would be contrary to analogy. And if we admit that the volume of the compound does, or may, remain the same as that of potassium, previously to the

If it is supposed that potassium has absorbed a certain proportion of hydrogen, its great lightness is readily explained; and we know from experiments that the amalgam of mercury and ammonia owes its great lightness to the hydrogen which

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combination, then it follows that the specific gravity of the compound will be increased by the *whole positive or absolute weight* of the oxigen and carbonic acid consolidated in the compound; because such would be the case even if water itself combined with potassium.

Messrs. Gay-Lussac and Thenard found (*vol.* 2. *p.* 210.) that 0.gr.43302 of dried potash, absorb, to be completely carbonated 0.gr.16798 carbonic acid.

They also ascertained that potassium requires $\frac{17}{100}$ of oxigen, to form potash. (*Vol.* 2. *p.* 261.)

Then the above 0.gr.43302 of dried potash
contained 7361 of oxigen,

and 0.gr.35941 of potassium.

And the absolute weight of the oxigen and carbonic acid, combining with potassium to form carbonate of potash, was,
carbonic acid 0.gr.16798
oxigen 7361

weight of both 0.gr.24159, which is nearly 68 per ct. of 0.gr.35941, the weight of the potassium.

The specific gravity of potassium, according to our authors, is
to water as 0.gr.86507 to 1,00000. (*Vol.* 2. *p.* 260.)
add 68 per ct. 58820

And the specific gravity of carbonate of potash ought to be, 1.45327 : 1.00000.

Or nearly as 1, 5 : 2; but it is actually, according to Berthollet, as 2, 3 : 1.

To attain this, we must presume that the volume of potassium, in combining with oxigen and carbonic acid diminished $\frac{3}{10}$. Because, if the absolute weight of a substance remains the same, whilst its volume diminishes, its specific weight increases at double the ratio of its diminution in size. Its specific weight, for instance, has doubled, when the volume has diminished one half, whilst its absolute weight remains the same.

If the substance, therefore, of which the specific weight is as 1, 5 : 1, diminishes in volume three tenths, its specific gravity will increase six tenths, or 0, 9, which would give 2, 4 : 1; whilst the actual specific gravity of carbonate of potash is stated only at 2, 3 : 1.

We must also recollect that, agreeable to our authors, (*vol.* 2. *p.* 210,) it has not yet been possible, by any process hitherto employed, to free potash absolutely from water.

The

our authors have proved to exist in this compound.* The hydrogen would also explain the great volatility belonging to potassium; whilst potash appears absolutely fixed, or possessed only of that volatility, which depends on gases with which solid bodies happen to be in contact.

2. The property of potassium and sodium of giving, with ammoniacal gas, and with sulphurated hydrogen gas, precisely the same quantity of hydrogen gas as with water.

To explain this second fact, Mr. Davy reminds us, that all substances have with each other constant and uniform relations of saturation; from which circumstance, he thinks, it follows as a necessary consequence, that potassium must disengage the same quantity of hydrogen with water, the ammoniacal gas and sulphurated hydrogen gas.

Our authors show that this explanation does not agree with other facts. They offer no new explanation in its stead; yet they conclude *that an objection, resting solely on the singularity of a fact, which happens to be new and not in conformity with other known facts, does not rest on a basis sufficiently solid.*

This reflection does not remove the difficulty arising, with regard to the *theory of the metals*, from the quantity, precisely equal, of hydrogen gas, disengaged by the action of potassium on water, on sulphurated hydrogen gas, and on ammoniacal gas. This coincidence of products, in three cases so different, appears to us a circumstance of great weight in the estimate of the relative probability of the two theories.

3. The property, possessed by potassium and sodium, of absorbing hydrogen gas at a temperature rather elevated, whilst they are incapable of absorbing azotic gas at any temperature whatever.

The whole difficulty, therefore, is reduced to this, to conceive that a quantity of potassium, on entering into combination with oxigen and carbonic acid, loses at the same time three tenths of its former dimensions; which diminution of volume, perhaps, is not quite without precedent in chemical compounds.

The fact, we should imagine, is only perplexing, because the weight of oxigen and carbonic acid bears, to the weight of potassium, on account of its remarkable lightness, a much greater proportion than the weight of the same substances bears to the weight of other solids.

* As hydrogen, however so great its specific lightness may be, must have *some* weight, its combination with a substance can only lessen the specific gravity of this substance by giving it *expansion*. But expansion, from porous arrangement of integrant particles, is not more difficult to conceive than expansion from combination with hydrogen.

It has been mentioned that, when potassium acts on ammoniacal gas, a substance is formed of an olive colour. When this substance is heated, three fifths of ammonia, or of the elements which compose it, are disengaged. In the *theory of the hydrurets* it is supposed, that two fifths of the ammonia remain then combined with the potassium, freed from its hydrogen. And in that *of the metals* it is presumed that all the hydrogen of the ammonia has been expelled, and that there remains only azote in combination with the potassium. We have, therefore, to examine, whether it is probable that azote can form, with potassium, a combination sufficiently powerful to expel all the hydrogen and remain alone.

We have, on the one hand, to consider the combining power of hydrogen, and on the other, that of azote. Of all known substances hydrogen exhibits the strongest and the most general affinity. To convince ourselves of this, we need only consider its refracting force; the power it exercises over oxigen, the characteristic properties of which the admixture of a small proportion of hydrogen is sufficient to destroy; and the numerous compounds it instantly forms under favourable circumstances; in particular those with the metals. Further, our authors have shown that, even in its elastic state, it is capable, at a certain elevation of the thermometer, of combining with potassium and sodium.

Azote, on the contrary, forms only a small number of compounds of little stability; and hitherto no combination of it has been effected with the metals, either in its gaseous or nascent state. Our authors themselves have tried in vain to combine it with potassium and sodium.

It appears, therefore, more natural to us to ascribe the compound, formed on this occasion, to the agency of hydrogen or of ammonia, than to that of azote alone.

After having discussed the grounds on which the *theory of the hydrurets* may be supported, our authors state those which determined their choice.

We cannot even mention all the reasons they bring forward in favour of the theory of the metallic nature of potassium and sodium. It is proper that those who wish to form an opinion on this question, should have recourse to the work itself. We shall confine ourselves to a few considerations, which seem to have the greatest weight.

1. The metallic lustre, the opacity, and the conducting power of potassium and of sodium. But these characteristics had originally appeared of little importance to our authors themselves; because at first they did not prevent them from giving

the preference to the *theory of the hydrurets*. Indeed there are many other substances possessing a brilliancy which may be called metallic. The charcoal, for instance, which is deposed, when the products of vegetable substances are made to pass through an *incandescent* tube, possesses this brilliancy in a high degree. It possesses also opacity; moreover, charcoal is a conductor of electricity.

2. Their preparation by means of perfectly dry alkaline carbonates; and to this head belong several observations on the dry state of alkaline compounds.

It is certain, that in order to adopt the *theory of the hydrurets*, we must necessarily admit that the dry alkalies contain a certain quantity of water, as well as the muriatic gas; and that, on combining, they retain a proportion of this water, which the action of the acids, aided by heat, cannot separate from them. But, in the *theory of the metals*, it is not necessary to admit that potassium and sodium retain, under the same circumstances, a quantity of oxigen which reduces them to the second degree of oxidation? And these two quantities only differ as to the small proportion of hydrogen, which is supposed to be combined with potassium and sodium.

If, on the other hand, it is considered, that the pure alkalies exert a great action on water, so that it is impossible to deprive them of that which is incontestibly united with them, except by means of combination; that they absorb it from the air and become deliquescent, whilst they can only attract oxigen under some peculiar circumstances, and that then they retain it so feebly, that the bare contact of water is sufficient to detach from them all that portion which constitutes the last degree of oxidation; it will not appear improbable that they may retain some water when they combine with the acids, which themselves exert a powerful action on water.

3. The great analogy which subsists between alkalies and metallic oxids.

Ammonia, which our authors themselves consider as a compound of hydrogen and azote, weakens very much this analogy, if it does not totally destroy it. The chemical properties of oxid of arsenic and oxid of antimony differ considerably from those of potash. Several metallic oxids form, with the alkalies, compounds of considerable stability, which even crystalize regularly; and we know of no similar compounds among the alkalies, unless alumine and silex are confounded with them.

But, however this may be, we shall proceed to the discoveries of our authors, which form the fourth part of their work.

This last part is devoted to an object which has no immediate relation to the preceding researches, but which is not, on that account, less interesting. It is a new analysis of vegetable and animal substances; or an investigation into their constituent principles.

It is necessary to recollect, that Lavoisier endeavoured to apply his important theory of combustion to the investigation of the nature of vegetable and animal substances, which he considered as oxids; the one having for their basis hydrogen and carbon, the others hydrogen, carbon and azote. He saw that, by burning these substances in a given quantity of hydrogen gas, it was possible to ascertain, from the water and carbonic acid obtained in the combustion, the constituent principles of the substance burnt. He proceeded on this plan to the analysis of several of them; and if it was not made with that exactness which has been attained since, at least it cannot be doubted that his method was susceptible of it.

Since that period this description of analysis has been too much neglected. That of ether and alcohol may, however, be mentioned, which has been made, with great precision, after a similar method.

But there are several substances to which it would be impossible to apply Lavoisier's method. Our authors have imagined one equally ingenious and general; and in their process also, the constituent principles of a substance are discovered by its combustion in oxigen gas, and by carefully ascertaining the quantity of oxigen consumed in the combustion, the quantity of carbonic acid and water formed, the gaseous substances which may be disengaged, and the fixed principles found in the solid residue.

All these results are obtained, by burning the substance to be examined, by means of the oxigenated muriate of potash, in an apparatus which gives vent to the gases which are disengaged through a tube plunged under mercury.

A mixture is made of a very exact weight of the substance, and of the suroxigenated perfectly dry muriate. It is introduced into the apparatus by means of a cock, provided with a cavity for receiving this mixture, which is then exposed to a sufficient degree of heat. The gas, which is evolved, is conducted under the mercury. This gas is measured, and the proportion of carbonic acid, which it contains, and of azote, which may have been evolved at the same time, ascertained. On the other hand, it is known what quantity of oxigen the suroxigenated muriate employed must have furnished. Thus, from all these observations the quantity of carbon, of oxigen

and of azote, which the substance under examination contained, is inferred, whilst the suroxigenated muriate gives a determined weight of muriate of potash. If, therefore, the substance contained any fixed principles, they are found with the muriate of potash and separated from it; or else a particular operation is performed, by means of which the fixed principles are ascertained.

We cannot describe in detail the apparatus and process of our authors. They give the description of them with much care, and neglect none of the circumstances which may have an influence on the exactness of each experiment.

They have already analyzed by this means fifteen vegetable substances; viz. the oxalic, tartareous, mucous, citric and acetic acids; resin of turpentine, copal, wax and olive-oil; sugar, gum, starch, milk sugar, beech and oak wood. Each analysis is exhibited in a table, showing the quantities of the substance employed, that of the products, and, finally, the calculation of the result.

Animal substances, submitted to the same process, caused a difficulty, arising from the azote, a constituent part of them. If oxigen happens to be in excess during the operation, nitrous gas is formed, of which it would be difficult to ascertain the quantity; on the other hand it is necessary to avoid the formation of ammonia. The device by which this inconvenience is avoided, consists in employing a proportion of suroxigenated muriate, such as that this salt be not in excess, and yet sufficient in quantity to transform all the animal substance completely into gas. This proportion is easily ascertained by preliminary trials. They made, in this manner, the analysis of dried fibrine, of albumen, of gelatine and of caseous matter.

A very remarkable result from all these analytical researches terminates this work, so rich in results of importance. In sugar, starch, gum and the woods, the proportion of hydrogen and oxigen is the same as that which constitutes water; whilst in animal substances an excess of hydrogen exists with azote, in very nearly the proportions which constitute ammonia.

APPENDIX.

COMMERCIAL CODE

OF THE

FRENCH EMPIRE.

Translated for the American Review, with explanatory Notes.

BOOK I.

Of Commerce in general.

TITLE I.

Of Merchants. (1)

ARTICLE 1. THOSE are merchants who carry on trade or commerce, and make it their profession or business.

ART. 2. It shall not be lawful for a minor of either sex, though *emancipated* (2) and above the age of eighteen years, to avail himself (3) of the liberty of trading, granted to such minor by the

(1) The word in the original is *commerçants*, which includes every grade and description of persons engaged in trade, from the *armateur*, or ship owner, down to the retailer or shopkeeper. We have no word in the English language of such extensive import. The word *trader* implies some kind of inferiority, and seems to exclude the higher classes of mercantile men. We have therefore made use of the word *merchant*, which must be understood throughout the present work in this general *technical* sense.

(2) The doctrine of *emancipation* is borrowed from the civil law, into which it was introduced to soften the rigor accompanying the great extent and duration of the paternal power. Therefore a minor who is *emancipated*, is said to be out of the power of his father and mother. *Emancipatione desinunt liberi in potestate parentum esse.* Institut. lib. 1. tit. 12. § 6. By the Napoleon code a minor may be emancipated by his father or mother, and is so *ipso facto* by marriage; but not before he has attained the age of fifteen years; and if an orphan, he may be emancipated by a *family council*, (of which we shall speak in a subsequent note,) but not until the age of eighteen. The effects of emancipation are: that the minor is intrusted with the management of his own real and personal property, and may even make a lease of his real estate for a term not exceeding nine years; but he cannot sell it, nor can he borrow money on any account, without the consent or advice of the *family council*. His personal contracts are otherwise valid, but the courts will set them aside for his benefit, if it appears that advantage had been taken of his youth.

(3) In order to avoid as much as possible, what may be considered by some as legal jargon, we shall not make use of the usual phrascology *him or her, his or her*, when speaking of something applicable to persons of different sexes, but shall invariably employ the masculine as a common gender.

487th article of the Napoleon Code, (4) nor shall such minor be considered as of full age for the purpose of giving validity to the commercial engagements which he may contract, unless he previously comply with the following requisites: 1st. He must be authorized by his father or mother, or by a deliberation of the *family council* (5) in case of the death, *interdiction* (6) or absence of the father, or in default of both father and mother, which deliberation must be confirmed by the civil tribunal. 2d. The authorization must be recorded in the registry, and posted up in the hall of the commercial tribunal of the place where the minor intends to reside.

ART. 3. The preceding article is applicable to all minors, though not merchants or traders by profession, with respect to all acts declared to be commercial, by the 632d and 633d articles of the Napoleon Code, Tit. II. Book IV.

ART. 4. No married woman can be a *sole trader*, without the consent of her husband.

ART. 5. A woman, sole trader, may, without the special (7) authorization of her husband, bind herself in respect to her trade; and in such case, she also binds her husband, if there be between them a *community of goods*. (8)

(4) The article is in these words: "Every *emancipated* minor who actually carries on trade and commerce, is reputed of full age with respect to all acts relating "to such commerce or trade."

(5) *Family councils* have been instituted by the French laws for the protection of minors, idiots and absentees, and of all those generally, who are not in a situation to manage their own concerns. They consist of a given number of the nearest of kin to the party, or of friends, in default of kindred, and assemble, when legally called together, under the direction of a magistrate, who presides at their meetings. They appoint *tutors* and *curators* (guardians and trustees,) give or refuse their consent to the marriage of minors, and do a variety of other acts within the scope of their institution, which it would be too long to enumerate. Their proceedings are committed to writing, and after being confirmed by a court of justice, become matter of record, and have the force and effect of judgments.

(6) A person who by the decree of a competent tribunal is declared to be *non compos mentis* and of course incapable of managing his own business, is said to be *interdicted*, and his condition in law is styled *interdiction*, because the decree *interdicts* or prohibits him from meddling with his civil concerns.

(7) By the French law, no contract of a married woman is valid, unless expressly sanctioned by her husband; but in the case of a *feme sole trader*, such particular sanction or authorization is not required.

(8) Under the old law of France, as it existed before the revolution, the rights of husbands and wives with respect to property were various, according to the different laws and customs which prevailed in the several parts of the kingdom. Among those, the most prominent were,—the *custom of Paris*, which was itself one of the modifications of the feudal system that prevailed over a great part of the northern and middle provinces of France;—and the civil law of the Romans, which was the established system in the South. By the former of these a kind of partnership existed between the husband and his wife, which was and still is called *community of goods* (communaute de biens.) Under the latter, the wife remained sole mistress of her own property, and particularly of *les biens dotaux*, that is to say, the real or personal estate which her friends had given her as a dowry in marriage. When the Napoleon code was framed, a warm controversy arose between the lawyers appointed to prepare it, as to which of these two systems should be exclusively adopted. The southern jurists stigmatized the cus-

A woman is not considered as a sole trader, if she merely retails the merchandise of her husband; and is only considered as such when she carries on trade separately from him.

ART. 6. Merchants who are minors, being authorized as above, may bind and hypothecate their real estate.

They may even alienate the same, conforming, however, to the formalities prescribed by the Napoleon Code, art. 457, and following.

ART. 7. Women sole traders may likewise bind, hypothecate and transfer their real estates, excepting only their dowries, or estates in nature thereof, (9) (when married under the *dotal system*) (10) which cannot be hypothecated or alienated, except in the cases determined, and with the formalities prescribed by the Napoleon Code.

TITLE II.

Of Commercial Books.

ART. 8. Every merchant or trader is bound to keep a day book or journal, which shall exhibit diurnally his debts and credits, his mercantile transactions, negotiations, acceptances or indorsements (11) of bills and notes, and generally all his receipts and pay-

tom of Paris as a gothic excrescence of the feudal law, while their opponents were not backward in applying similar epithets to the rival system. Bonaparte who, whatever may be his other defects, cannot be said to want decision, would not however venture to cut the gordian knot of this juridical controversy, and after a great deal of fruitless disputation, the important point was settled by compromise, and it was provided by an article in the code, that parties might elect to marry under one or the other system, but that if they made no election, the custom of Paris should prevail. Hence it is now usual for parties to declare in their marriage articles, that they marry under *le régime de la communauté*.—The system of community of goods borrowed from the custom of Paris—or *le régime dotal*, the system of the civil law, by which the wife is intitled to the independent enjoyment of her dowry. It would be curious to inquire whether an analogous right of election is given to the different nations of Europe among whom the Napoleon code has been lately introduced, or whether they are obliged to choose between *le régime de communauté* and *le régime dotal*. They certainly have as good a right as the inhabitants of the North or South of France, to adhere to their own long established local usages and customs.

(9) By their marriage articles the parties may stipulate, that the wife shall hold a particular estate as a dowry, although it be not in fact such: in like manner, under the custom of Paris, the *community of goods*, may be regulated, enlarged or limited by the contracting parties at their will; it being a fundamental rule of the French law, that parties may modify their civil contracts, and particularly those which are made in consideration of marriage, in whatever manner they please, provided they do not violate the rules of morality.

(10) Whenever these technical expressions, *le régime de communauté* and *le régime dotal* shall occur in the course of this work, we shall call the former in English the *community* and the latter the *dotal system*.

(11) This word, *indorsements*, is inserted here principally with a view to *accommodation paper*, so frequently the cause of the ruin and bankruptcy of merchants. "Formerly," say the French counsellors of state, in their exposé des motifs, or address to the legislature developing the spirit and motives of this part of the code, "those indorsements of accommodation paper often constituted a "considerable part of the debts of a bankrupt, and yet they were not entered in "his books, nor were any traces to be found thereof, but in the fugitive, uncon-

ments on whatever account, (12) and in which shall be stated monthly the amount of the sums employed to defray the expenses of his household: This shall be independent of the other books usually kept by merchants, but not indispensable.

He is bound to file all the letters which he receives, and to copy in a register or letter book those which he writes.

ART. 9. He is bound to make annually, under his own signature, an inventory of his real and personal property, and of his debts and credits, and to cause the same to be transcribed every year in a book kept for that special purpose.

ART. 10. The day book and inventory book shall be *flourished.* (13)

The letter book shall not be subject to this formality.

All the books shall be kept in regular chronological order, without any blanks, chasms, or marginal references.

ART. 11. The books which are ordered to be kept by the above 8th and 9th articles, shall be *inspected and flourished*, (14) and the pages thereof numbered, either by one of the judges of the tribunal of commerce, or by the mayor or his assistant (15) in the usual form and *gratis*. Merchants shall be bound to preserve those books for the space of ten years.

ART. 12. Commercial books, regularly kept, may be admitted by the judge as evidence between merchants in mercantile causes.

ART. 13. The books which merchants are bound to keep, shall not be received as evidence in favour of those who have kept them, if they are not authenticated with the formalities above prescribed. This is to be without prejudice to the regulations contained in the third book of this code, intitled, "*Of failure and bankruptcy.*"

ART. 14. Books and inventories cannot be ordered to be brought into court, except in causes concerning successions, *community*, (16)

"randums of exchange brokers, and in some vague and uncertain information of "the fraudulent operations which were practised."

(12) "Even," says the *exposé des motifs*, "the reimbursement of his wife's dowry, "or the proceeds of successions, donations, or the like." "For," continue the counsellors of state, "the whole *conscience* of a *merchant* ought to be found in his "books, and the *conscience* of the *judge* ought from them to be fully enlightened "respecting his transactions."

(13) Marked by a magistrate with a *paraphé* or flourish, such as is usually subjoined to signatures.

(14) *Paraphés et visés*, the former of these words has already been explained. The use of the *flourish* is to save the trouble of writing the signature at full length. The *visé*, which we translate *inspected*, is a certificate of the magistrate at the end of the book, that he has *viewed* or seen it. It is short, and contains only the word *vû*, (*seen* or inspected) together with the date and the magistrate's signature.

The same formalities were originally prescribed by the celebrated commercial ordinance of Louis XIV, of 1673, art. 3.; but *M. Jousse*, the commentator on that ordinance, informs us that at the time when he wrote (1760) they had fallen into disuse. Whether they will be now better inforced, remains to be seen.

(15) *Adjoint.* An officer appointed to assist the mayor in the exercise of his functions and to supply his place when necessary.

(16) *Community of goods*, between parties joined in marriage. See the pre-

the settlement of partnership accounts, and in cases of *failure*. (17)

ART. 15. In the course of a controversy at law, the exhibition of books may be ordered by the judge, even *ex officio*, in order to extract out of them what may be material to the *issue*. (18)

ART. 16. If the books which are ordered or offered to be exhibited, should be at a distance from the place where the tribunal is sitting, the judges may direct letters *rogatory* (19) to the tribunal of commerce of the place where the books are, or delegate a justice of the peace to examine the said books, make a *proces-verbal* (20) of their contents, and transmit it to the court in which the cause is pending.

ART. 17. If the party, whose books are appealed to as evidence of a fact, refuse to produce them, the judge may put the other party to his oath. (21)

TITLE III.

Of Partnership.

SECTION 1.

Of the different kinds of partnerships, and the regulations thereof.

ART. 18. The contract of partnership is regulated by the general municipal law, by the special laws relating to commerce, and by the agreements of the parties.

ceding title, note (8). It may be proper to observe here, that the word *goods* (*bona*) in the civil and French law, is not confined as with us to *chattels* merely, but includes also real property.

(17) Insolvency or bankruptcy.

(18) Although for the sake of perspicuity, we sometimes make use in this translation of the language of the common law, the words must not, however, be taken in their strict technical sense; as for instance, in the present case, it must not be supposed, that in the French courts of justice, a formal issue is joined according to the rules of English special pleading. But this word must be taken in its more enlarged sense, to mean the cause itself, as it stands on the allegations of the parties, in whatever form exhibited.

(19) By the civil law, the courts of justice not only of the same, but of different countries, are considered as bound to be auxiliary to each other for the furtherance of justice, and this is done by means of *letters rogatory*, by which one court requests the other to take depositions of witnesses or the like, and sometimes even to carry their judgments into execution. Such letters were formerly in use in England, and were addressed by the English courts to the tribunals abroad. See 1 Ro. Ab. 530. pl. 12, 13. But in modern times they have fallen into disuse. We understand, however, that they have been lately revived in this country, and that they may be obtained from the circuit court of the United States for the Pennsylvania district, for the purpose of causing depositions of witnesses to be taken in foreign countries.

(20) A *process verbal* in the French law, is an official statement of facts, *in perpetuam rei memoriam*. The application of this technical term is very extensive, and includes every similar statement, from the report of a judge who takes an inquest, down to the protest of a master of a vessel, who relates the damage which he has suffered at sea. The law requires those statements to be made at the time and place in which the facts occur, which are related therein, or as soon after, and as near thereto as may be. Hence the rule which directs, that the protest of a sea captain shall be made within twenty-four hours after his arrival at the first port.

(21) By the judiciary act of the United States, the courts may order either

ART. 19. The law acknowledges three kinds of commercial partnerships.

Partnership under a collective firm,

Commandatary (22) partnership,

Anonymous partnership.

ART. 20. Partnership under a collective firm, is that which is contracted by two or more persons, for the purpose of trading under a partnership firm.

ART. 21. The names of the partners can alone enter into the partnership firm.

ART. 22. Partners under a collective firm, whose names are mentioned in the partnership articles, are jointly and severally bound for all the engagements of the firm, although only one of the partners should have signed, provided it be in the name of the firm.

ART. 23. *Commandatary* partnership is contracted between one or more partners jointly and severally responsible, and one or more partners who only bring a certain sum of money or effects into the common stock, and are denominated *commandators*, or *commandatary* partners.

It is to be administered under a partnership firm, which must necessarily consist of the name of one or more of the responsible partners.

party to produce his books on the trial of a cause, and on his failing to comply, judgment is to be given in favour of his adversary. 1 Laws U. S. 59. Under the French law, in such a case, the particular allegation only, in proof of which the exhibition of the books is required, is considered as proved, by the refusal to produce them, accompanied with the oath of the party making the allegation, which the judge is authorized to administer.

(22) *Société en commandite.* Our language has no corresponding words to express this technical phrase, nor that of *associé commanditaire*, which is derived from it. We are therefore obliged to adapt the French words themselves as well as we can to our own idiom, with some variations for the sake of euphony and analogy as far as these can be obtained.

This species of partnership, like the greatest part of the mercantile customs of Europe, draws its origin from Italy. Hence the words *commandite* and *commanditaire*, are derived from the Italian *comando*, which itself takes its derivation from the Latin *mandatum*. *Société en commandite*, is, as it were, *societas cum mandato*, a contract of partnership coupled with a contract of *mandatum* or bailment. Such a partnership is composed of one or more acting and responsible, and one or more dormant partners, the latter of whom are not bound by the acts of their associates beyond the amount which they bring into the general stock. They merely place their funds in the hands of the others, to be employed in trade for their benefit, and therefore these different partners, not only as between each other, but as between them and the rest of the world, stand together in the relation of *principal and factor*, mixed, indeed, with some of the circumstances attending ordinary partnerships, but only in a certain degree and to a limited extent. From this mixture of relative rights and duties, this species of contract has received its denomination.

These partnerships are useful in countries where there are great capitalists, who wish to employ a part of their money in trade without exposing themselves to unlimited risks. They furnish employment for funds which would otherwise remain inactive. The laws of America and Great Britain, however, do not recognise such associations.

Art. 24. When there are several responsible partners trading in their joint names, whether they all act together, or one or more of them act for the whole, the partnership is, as between them, a partnership under a collective firm; and a *commandatary* partnership as between them and those who have only brought a particular sum into the common stock.

Art. 25. The name of a *commandatary* partner cannot make a part of the partnership firm.

Art. 26. The *commandator* does not bear the losses of the partnership beyond the amount of the funds which he has brought, or engaged to bring, into the stock thereof.

Art. 27. The *commandator* cannot intermeddle in the management of the partnership affairs, nor be employed in the same, even by virtue of a letter of attorney.

Art. 28. If the *commandator* should infringe the prohibition contained in the next preceding article, he becomes jointly and severally responsible with the other partners, for all the debts and engagements of the partnership.

Art. 29. *Anonymous* (23) *partnership* is not carried on under a partnership firm, or designated by the name of any of the partners.

Art. 30. It is designated by the object of its establishment.

Art. 31. It is administered by agents appointed for a limited time, and subject to revocation, who may be either members of the partnership, or strangers serving gratuitously or receiving a pecuniary reward for their services.

Art. 32. The agents are answerable only for the execution of the trust committed to them.

They do not, by reason of their agency, contract any personal obligation, or become jointly and severally responsible for the engagements of the firm.

Art. 33. The partners are not answerable for more than the amount of their interest in the partnership.

Art. 34. The capital stock of an anonymous partnership is divided into shares and even into parts of shares of equal value.

Art. 35. The share may be evidenced by a certificate in favour of the bearer.

In such a case it may be transferred by the mere delivery of the certificate.

Art. 36. The right to a share may be established by an inscription on the books of the company.

In this case, the shares are transferred by an assignment made, and subscribed in the books, by the assignor, or his lawful attorney.

Art. 37. No anonymous partnership can exist but under the authorization of government, and with its approbation of the articles constituting the same, which approbation must be given in

(23) These *anonymous partnerships* are what are called with us moneyed corporations, such as banks, canal and turnpike companies and the like. They appear to differ from ours only in name, as they cannot be established without the authorization of the government. See below, art. 37.

the form prescribed by the regulations of the public administration.

ART. 38. The capital stock of *commandatary* partnership may also be divided into shares, without any other derogation from the rules established for that species of partnership.

ART. 39. Partnerships under a collective firm, and *commandatary* partnerships, must be evidenced by written instruments, either in solemn form or under private signatures, the parties conforming in the latter case to the 1325th article of the Napoleon Code.

ART. 40. Anonymous partnerships can only be evidenced by instruments formally authenticated.

ART. 41. Parole proof shall not be admitted against or beyond the contents of partnership articles, nor of what may have been said before, at, or after the time of executing the instrument, even though the sum in dispute may not exceed one hundred and fifty francs. (24)

ART. 42. An abstract or statement of the substance of all articles of partnership, whether commandatary or under a collective firm, must, within fifteen days after the date thereof, be delivered into the registry of the tribunal of commerce of the district in which the commercial partnership is established, to be inscribed on the register, and posted up for the space of three months in the hall where the court holds its sittings.

If the partnership consist of several commercial houses, established in different districts, such abstract shall be delivered, recorded, and posted up as above, in the tribunal of commerce of each district.

These formalities shall be observed under pain of nullity as between the partners; but the want of any of them shall not be alleged by the partners against third persons.

ART. 43. The abstract must contain,

The names, surnames, titles, and places of abode of the partners, other than the mere share holders or *commandators*.

The firm of the partnership.

The names of the acting partners who are authorized to sign the partnership firm. (25)

The amount of the moneys and effects brought or to be brought into the partnership, by the responsible or *commandatary* partners.

The period when the partnership is to begin, and that when it is to cease.

ART. 44. The abstract of partnership articles is signed, when formally authenticated, by the notaries; and when under private sig-

(24) By the French *statute of frauds*, all debts and contracts above the value of one hundred and fifty francs, must be proved by written evidence.

(25) It happens frequently in France, that by partnership articles some of the partners are restrained from using the partnership firm. They are bound by the acts of the others, but are not authorized to bind them. This takes place particularly when a young man or a clerk is admitted into a partnership, before he has given sufficient proofs of his prudence or experience in business.

nature, by all the partners, if the partnership is under a collective firm; and by the responsible or acting partners, if it be a *commandatary* partnership, whether it be divided into shares or not.

ART. 45. The authorization of the government in favour of an anonymous partnership, must be posted up with the articles, and during the same length of time.

ART. 46. Every continuation of a partnership after the expiration of its original term must be evidenced by a declaration of the co-partners.

That declaration and all articles for the dissolution of a partnership before the time of its original limitation, every change or removal of partners, all new clauses and stipulations, and all alterations in the firm, are subject to the formalities prescribed by art. 42, 43 and 44.

If those formalities be omitted, the parties shall be liable to the penalties specified in the third paragraph of art. 42.

ART. 47. Independent of these three species of partnerships, those special associations which are denominated *joint concerns* are also recognised by law.

ART. 48. These associations relate to one or more commercial operations; their form, their objects, the respective interests of the concerned, and the clauses and conditions thereof are settled by the agreement of the parties.

ART. 49. Joint concerns may be evidenced by the books and correspondence of the parties, or by parole proof, which the courts may admit in their discretion.

ART. 50. They are not subject to the formalities prescribed for the other species of partnership.

SECTION II.

Of Disputes between Partners, and How they are to be determined.

ART. 51. All disputes between partners in matters relating to the partnership, shall be determined by arbitrators.

ART. 52. The parties may appeal from the award of the arbitrators, or remove the same to the court of *Cassation*, (26) if they have not expressly renounced the right so to do. The appeal shall be carried to the court of appeals. (27)

(26) The court of *cassation* is the highest tribunal of appellate jurisdiction in France, but its powers extend only to the correction of errors in law, and in certain cases to the transfer of causes from one tribunal to another. Its jurisdiction is coextensive with the French empire. It consists of one first president, two presidents and fifty judges. The grand judge minister of justice presides in this court, whenever the emperor thinks proper.

(27) There is one court of appeals in each department. The number of the judges is various, and in proportion to the extent and population of their respective jurisdictions. The highest number is 30, and the lowest 12. They are independent of the *juges auditeurs*, four of which at least, and six at most, are attached to each of these appellate courts. These *auditors* perform the ministerial duties of the judicial office, such as taking depositions of witnesses and the like, and occa-

ART. 53. The nomination of arbitrators is made,
By an act (28) under private signatures,
By a notarial act,
By an extrajudicial act,
By the consent of parties given in a court of justice.

ART. 54. The term within which the award is to be given, is to be settled by the parties at the time of nominating the arbitrators, and if they do not agree thereon, it is to be fixed by the court.

ART. 55. If one or more of the partners refuse to nominate arbitrators, they are to be nominated *ex officio* by the tribunal of commerce.

ART. 56. The parties are to deliver their memorials (29) and vouchers to the arbitrators, without any judicial formality.

ART. 57. The partner who neglects to deliver in his memorial and vouchers, is to be summoned to deliver them within ten days.

ART. 58. The arbitrators may, according to the circumstances of the case, enlarge the time for the delivery of the papers.

ART. 59. If there has been no prolongation of time, or if the additional delay is expired, the arbitrators are to make their award on the memorials and exhibits, which shall have been delivered to them.

ART. 60. In case of difference of opinion, the arbitrators shall choose an umpire, if one be not already nominated by the articles of submission, and if the arbitrators do not agree in the choice of the umpire, he is to be appointed by the tribunal of commerce.

ART. 61. An award must contain the reasons on which it is founded.

It must be filed in the registry of the tribunal of commerce.

ART. 62. The above rules are applicable to the widows, heirs and other representatives of the partners.

ART. 63. If minors are interested in a controversy relative to a commercial partnership, their guardian cannot waive the right of appealing from the award of the arbitrators.

ART. 64. All actions against partners other than those (30) who

sionally supply the places of the other judges. Each of these courts has at least one president: some have two, and others have also a *first president*. The grand judge presides in any of them when the emperor thinks proper.

(28) The word *act* in its literal sense, is synonymous to our word *deed*, or as we sometimes say *act* and *deed*. But in the civil and in the French law, it has a much more extensive signification, and means every written memorial of a public or private transaction, which is authenticated or confirmed by the signatures of the parties or of public officers. Thus the records of a tribunal are called the acts of court, *acta curiæ*, and private contracts, are the acts of the parties and of the officers who authenticate them. By *synecdoche*, the instrument by which acts are evidenced, takes itself that denomination, precisely as we call a *deed* the written paper or parchment, which is in fact no more than the memorial or evidence of the act of the parties.

As the word act will often occur in this translation, we have thought that this explanation would not be useless.

(29) These memorials are written statements prepared by the parties or their counsel, containing the facts and arguments in support of their cause.

(30) In France, when a partnership is dissolved, one of the parties is generally

after the dissolution of a partnership have undertaken the settlement of the affairs thereof, their wives, heirs and representatives, are barred by the lapse of five years after the determination or dissolution of the partnership, provided the clause of the partnership articles stating the duration thereof, or the fact of its dissolution has been posted up and recorded conformably to art. 42, 43, 44 and 46, and provided the right of action has not since that time been revived as to them by some judicial proceeding.

TITLE IV.

Of Separation of Goods. (31)

ART. 65. Every suit for separation of goods (32) shall be instituted, prosecuted and determined according to the rules and forms prescribed by the Napoleon code, book 3. tit. 5. chap. 2. sect. 3. art. 1443 to 1447, and by the code of civil proceedings, part 2. book 1. title 8. art. 865 to 874.

ART. 66. Every decree of separation (33) or divorce between husband and wife, one of whom is a merchant, shall be subject to the formalities prescribed by the 872d article of the code of civil procedure; in default of which the creditors may at any time obtain a review of such decree so far as their interest is affected thereby,

appointed *pour faire la liquidation*, to settle and liquidate the affairs thereof. He has the management of all the remaining funds, and attends to the collection and payment of the outstanding debts. In his capacity of *associé liquidateur*, he institutes and defends in his own name all suits in which the partnership is interested. The other partners may, however, be sued, but it is not commonly done, unless it is believed that the *liquidateur* will not be found sufficient. To prevent their being harassed after a lapse of time with vexatious suits, the code has provided the limitation mentioned in this paragraph, which does not, however, extend to the *liquidateur*, because he is understood to be in possession of the funds of the partnership.

(31) We have already explained (above, not. 16,) that the word "*goods*" in the civil and French law is of the most extensive import, and includes every species of property, real, personal and mixed. It is to be understood in this sense when used in the course of this translation, except where the context may give it evidently a more restricted meaning.

The separation of goods here mentioned only takes place between husband and wife, and is either originally stipulated by the marriage articles, or decreed after marriage by a court of justice on the complaint of either party. It does not at all affect the matrimonial connexion, which subsists as before, except as to property, which is thenceforth held separately by the parties.

Such separation cannot be effected, after marriage, by mutual consent, but must be decreed by a court of justice on the complaint of the wife, when she has reason to believe that her husband is wasting the joint property. It may also be applied for by the creditors of the husband, but not without the consent of the wife, except in case of the husband's actual insolvency or bankruptcy, or as the French law energetically terms it, his *discomfiture*.

(32) Between the wife and husband, as above mentioned.

(33) *Separation or divorce.* The *separation* here spoken of is analogous to the divorce *à mensâ et thoro* of the English law. It is called in French *separation de corps*, as contradistinguished from the mere *separation de biens*. The *divorce* in question is that *à vinculo matrimonii*, which may be obtained in particular cases specified in the Napoleon code.

and controvert every settlement or liquidation of accounts made in consequence thereof.

ART. 67. The substance of all marriage articles, between parties, one of whom is a merchant, shall be transmitted by way of abstract within one month from the date thereof, to the several registries and halls (34) designated by the 872d article of the code of civil procedure, to be posted up conformably to the same article.

It shall be stated in that abstract, whether the parties hold their property in common under the community system, whether they hold it separately, (35) or whether their marriage has been contracted under the dotal system.

ART. 68. The notary who shall have received (36) the marriage articles, shall be bound to transmit the abstract thereof, conformably to the direction of the next preceding article, under the penalty of a fine of one hundred francs, and even of removal from office, and of being responsible to the creditors, if it shall appear that he acted through collusion.

ART. 69. Every husband or wife whose marriage has been contracted under the dotal system, and who shall afterwards engage in trade or commerce, shall be bound to deliver such abstract within one month from the day of first entering into business, and in default thereof, shall be punished as a fraudulent bankrupt.

ART. 70. Every husband or wife holding separate property, or married under the dotal system, who, at the time of the promulgation of this law, shall be exercising the profession of a merchant, shall be bound under the same penalty to deliver such abstract within one year after the said promulgation.

TITLE V.

Of the Public Exchange, and of Exchange Agents and Brokers.

SECTION I.

Of the Public Exchange.

ART. 71. The exchange is the place (37) in which merchants, masters of vessels and exchange agents and brokers meet together, under the authorization of government.

(34) These are the registry of the tribunal of commerce, and the halls in which the attornies and notaries respectively assemble.

(35) Property may be held separately by either the husband or wife, under the *community system*. The parties may by their marriage articles except what they please from the community stock, which generally consists only of their personal property, and of such real estate as is purchased out of the joint stock or the profits thereof, during coverture. They may even stipulate that every thing on both sides shall be held separately, and in that case they are *separés de biens*, but their contract is not therefore subject to all the incidents of the dotal system.

(36) The notary before whom an instrument or contract is executed, and who attests it by his signature, is said in the French law to *receive the act*.

(37) In the original, the exchange is figuratively said to be the assemblage of the merchants, &c. in the same sense in which we say that the church is the congregation of the faithful. But as that figure would perhaps appear too bold in our language, we have not ventured to adopt it.

ART. 72. The result of the transactions and negotiations which take place at the exchange, determines the current rates and prices of exchanges, merchandise, insurance, freight, land and water carriage, also of public and other securities, the value of which is susceptible of being ascertained.

ART. 73. Those current rates and prices are settled by the exchange agents (38) and brokers in the form prescribed by the general or special regulations of the police.

SECTION II.

Of Exchange Agents and Brokers.

ART. 74. The law acknowledges intermediate agents for commercial transactions, to wit: exchange agents (38) and brokers.

ART. 75. In every town where there is a public exchange, there are exchange agents and brokers.

They are appointed by the emperor.

ART. 76. Exchange agents appointed according to law, have alone the right of negotiating public and other securities of fluctuating value, of negotiating for the account of other persons, bills of exchange or notes, and all other negotiable paper, and of certifying the current value thereof.

Exchange agents concurrently with merchandise brokers negotiate and act in the way of brokerage in the sale and purchase of the precious metals, (39) and certify the current price or exchange thereof.

ART. 77. There are merchandise brokers,
Insurance brokers,
Ship brokers and interpreters,
Land and water carriage brokers.

ART. 78. Merchandise brokers, legally appointed, are alone authorized to act in the way of brokerage in the purchase and sale of merchandise, and to certify their current price; they also exercise, concurrently with exchange agents, the brokerage of the precious metals.

ART. 79. Insurance brokers, concurrently with notaries, draw up and prepare policies of insurance and authenticate the same by their signatures; they certify the rate of premiums for all voyages by sea, or inland navigation.

ART. 80. Ship brokers and interpreters negotiate affreightments; they alone are authorized to translate protests, charter parties, bills of lading, contracts and all other commercial acts,

(38) *Agents de change.* These are called in England and in this country, *exchange brokers.* But we have thought it best to translate the French denomination literally, in order to preserve the hierarchical spirit of the French law, which in this case by the more dignified appellation of *agents* means to imply a degree of superiority over mere brokers.

(39) *Des matieres métalliques.* This seems only applicable to foreign specie and bullion, and therefore we have translated it, the *precious metals.* A literal translation would have appeared awkward in our language

the translation whereof is necessary to be given in evidence in courts of justice; and lastly, they certify the current rates of freights.

They alone act as interpreters in commercial causes in courts of justice and at the customhouse, for all foreigners, merchants, ship masters, mariners and other seafaring persons.

ART. 81. The same individual may, with the authorization of government, unite the functions of exchange agent, merchandise or insurance broker, and of ship broker and interpreter.

ART. 82. Land and water carriage brokers legally appointed, are alone intitled in the places of their established residence, to act in the way of their profession, in matters concerning the carriage or transportation of goods by land and water; but they cannot in any case nor under any pretence cumulate the functions of merchandise brokers and of insurance or ship brokers, as designated in art. 78, 79 and 80.

ART. 83. Insolvent debtors or bankrupts cannot be exchange agents or brokers, unless they have been restored by *rehabilitation* (40) to their former rights.

ART. 84. Exchange agents and brokers are bound to keep a book in the form prescribed by art. 11.

They are bound to enter in that book day by day, and in order of dates, without erasure, interlineation or transposition, and without abbreviations or figures, all and every the conditions of the sales, purchases, insurances, negotiations, and in general of all commercial operations done through their agency.

ART. 85. An exchange agent or broker cannot in any case nor under any pretence, do or transact any commercial or banking business for his own account.

He cannot take an interest directly or indirectly, either in his own or under a borrowed name, in any commercial undertaking.

He cannot receive nor pay any thing for the account of his principals.

ART. 86. He cannot guaranty the execution of the bargains made through his agency.

ART. 87. Every infringement of any thing contained in the two next preceding articles, makes the offender liable to be removed from office, and subjects him to a fine not exceeding three thousand francs, to be imposed by the tribunal of correctional police. He is moreover answerable in damages to the injured party.

ART. 88. Every exchange agent or broker, who by virtue of the next preceding article, shall have been removed from office, cannot be restored to his functions.

(40) *Rehabilitation.* This word, though at present obsolete, was, in consequence of the usurpations of the popes, formerly known to the English law. See stat. 25 H. 8. c. 21. See also below, b. iii. tit. v. art. 604 & seq.

ART. 89. In case of failure (41) or insolvency, every exchange agent or broker shall be prosecuted as a bankrupt. (42)

ART. 90. The government shall provide by special regulations, for every thing which concerns the negotiation and transfer of public securities.

TITLE VI.

Of Factors, Agents and Carriers.

SECTION I.

Of Factors in general.

ART. 91. A factor is one who transacts business in his own name or under a partnership firm, for the account of his principal.

ART. 92. The rights and duties of attornies in fact, and agents who transact business in the name of their principals, are established by the Napoleon code, Book iii. tit. 12. (43)

ART. 93. Every factor who has advanced money on merchandise sent to him from another place to be sold for the account of a principal, has a lien on the said merchandise for the amount of his advances, with interest and charges, if the same be at his disposal, in his stores, or in a place of public deposit, or if before the arrival thereof he is able to prove by a bill of lading or *carriage bill*, (44) that the said merchandise was consigned to him.

ART. 94. If the merchandise has been sold or delivered for the principal's account, the factor is to be reimbursed out of the proceeds of the sales to the amount of his advances, interest and expenses, in preference to the creditors of his principal.

(41) The word *failure* (*faillite*) in the French law is synonymous to the English word *bankruptcy*. When accompanied with fraud or gross misconduct, it is called *banqueroute*. See our translation of the French Penal Code, in the third number of this Review, Append. p. 54. *in not.* See also the third book of this code, intitled, *Of Failure and Bankruptcy.*

(42) That is to say a *simple* bankrupt, which in the French law is distinguished from a *fraudulent* bankrupt; the bankruptcy in the former case being attended only with gross imprudence, or misconduct, but in the latter with actual fraud. See *infrà* art. 437. 586. 593. The punishment of a *simple* bankrupt, as provided by this code, is imprisonment for a term not less than one month, and not exceeding two years (*infrà* art. 592.) but its severity has been increased by the penal code, and exchange agents who fail or stop their payments are now to be sentenced to hard labour for a limited time, and to hard labour for life, if convicted of fraudulent bankruptcy. See Penal Code, art. 404. The reason of this severity we have already explained in a note to the article cited. As exchange agents are not permitted to engage in any business on their own account, or to guaranty the execution of the contracts which they negotiate, their insolvency can never be considered as innocent, being necessarily occasioned by the misapplication of the property of other persons confided to them.

(43) The text of the Napoleon code here cited, is rather too copious for insertion, but the reader would do well to refer to it.

(44) *Lettre de voiture.* See the description of this instrument below, art. 101. As it is not in use in England nor in America, where goods are trusted to inland carriers on mere receipts and sometimes even without, it has of course no technical denomination in our idiom; we have therefore given it the name of *carriage bill* by way of analogy, from *bill of lading*.

ART. 95. If goods are consigned to, or deposited with, a factor or agent, by a person residing in the same place with him, the factor or agent has no lien or privilege with respect to the merchandise so consigned to or deposited with him, unless he complies with the formalities prescribed by the 17th title of the 3d book of the Napoleon code concerning money lent on pawns or pledges. (45)

SECTION II.

Of Agents for the conveyance of Goods by land and water.

ART. 96. Every agent who undertakes the conveyance or transportation of goods or merchandise, is bound to enter in his day-book the nature and quantity of the goods, and if required, their value.

ART. 97. He is answerable for the arrival of the goods and merchandise within the time specified in the carriage bill, except in cases of *vis major* or *irresistible force*, (46) duly and legally proved.

ART. 98. He is answerable for the damage or loss of the goods or merchandise, except in cases of *vis major*, or where there is in the carriage bill a stipulation to the contrary.

ART. 99. He is answerable for the acts of the intermediate agents to whom he sends the goods.

ART. 100. As soon as the goods are out of the stores of the vendor or consignor, they are, if there be no stipulation to the contrary, at the risk of the owner of the same, saving his recourse against the agent and carrier respectively intrusted with the transportation thereof.

ART. 101. The carriage bill forms a contract between the consignor and the carrier, or between the consignor, the agent and the carrier.

(45) This appears to be intended to prevent pawnbrokers and others from taking goods in pledge, under color of consignment or factorage, and thus evading the strict but wholesome regulations which the Napoleon code has provided to check their impositions.

(46) *Force majeure, vis major.* Sir William Jones renders this technical expression of the civil law, by the words *irresistible force*, and we think that we may safely follow so great an authority. Nothing can be more strictly correct than his explanation, for the term *vis major*, in the civil law, includes every kind of superior force which human skill, courage or prudence cannot avert or resist, *quod humanâ providentiâ regi non potest.* Robbers, pirates, rebels, enemies, the power of princes and the rage of elements, all come within the meaning of that comprehensive expression.

There is no technical term at the common law precisely analogous to *vis major.* The words *the act of God and enemies*, which are most commonly used, have received too narrow and limited a construction, and sir William Jones himself confesses them to be inadequate. He proposes to substitute for them the words *inevitable accident*, which answer to the *damnum fatale* of the civil law. As the French law has preferred making use of *vis major* as the generic term, we think that we are bound to keep as closely as possible to the language of our text: we think it indifferent, however, whether those accidents which are included within the *vis major* and the *damnum fatale* of the civil law are generally expressed by the English words *inevitable accident*, or *irresistible force.*

ART. 102. The carriage bill must be dated.

It must specify:

The nature, weight or contents of the articles which are to be carried,

The time within which the transportation is to be effected.

It declares:

The name and place of abode of the agent through whom the transportation is effected, if one be employed,

The name of the person to whom the goods are directed,

The name and place of abode of the carrier.

It states:

The stipulated price for the conveyance of the goods,

The indemnity to be paid for delay,

It is signed by the consignor or by the agent.

The margin thereof exhibits:

The marks and numbers of the articles to be transported.

Carriage bills are to be entered at length in a book kept by the agent in regular successive order, and without blanks; the said book is paged and flourished by a magistrate.

SECTION III.

Of Common Carriers.

ART. 103. Common carriers are answerable for the loss of the articles which they carry, except in cases of *vis major*.

They are answerable for average or damage, other than that proceeding from the perishable nature of the goods themselves, or occasioned by irresistible force. (47)

ART. 104. If in consequence of irresistible force, the carriage of the articles has not been effected within the stipulated time, the carrier is not bound to indemnify the owner on account of the said delay.

ART. 105. All actions against a carrier are barred by the receipt of the articles, and the payment of the price for carrying the same.

ART. 106. If the consignee refuse to receive the goods, or any controversy arise respecting the same, their state and condition shall be ascertained by surveyors appointed by the president of the tribunal of commerce, or in his default, by a justice of the peace.

The goods may be sequestered, and afterwards secured in a place of public deposit.

The sale thereof may be ordered in favour of the carrier, to the amount of the price of transportation.

(47) No exception seems to be made here, to render common carriers responsible in cases of robbery, on the known principle of the civil and common law, that if they were not made answerable in such cases, they might confederate with robbers to the prejudice of their employers. Dig. lib. 4. tit. 9. l. 1. *Lane* v. *Cotton*, 1 Salk. 143. *Forward* v. *Pittard*. 1 Durn. and E. 27. Whether this article was meant to effect an alteration in this respect in the old established rule, we will not pretend to say. It is not always possible to judge from the letter of a law, of what it may be in practice.

ART. 107. The laws contained in the present title are applicable to boatmen, and owners of diligences and other public stage waggons.

ART. 108. All suits against factors and carriers for the loss or damage of merchandise, are barred by the lapse of six months as to goods carried in the interior of France, and of one year as to goods sent into foreign countries, to begin, in case of loss, from the day when the goods should have arrived at the place of their destination, and in case of damage sustained, from the day of the delivery of the merchandise.

TITLE VII.

Of Purchase and Sale.

ART. 109. Contracts of purchase and sale are evidenced:
By public acts or instruments,
By acts or instruments under private signatures,
By the bill of parcels or account of an exchange agent or broker duly signed by the parties,
By an invoice duly accepted,
By the correspondence and books of the parties,
By parole proof which may be admitted at the discretion of the tribunals.

TITLE VIII.

Of Bills of Exchange and Promissory Notes, and of the Prescription or Limitation of Actions founded thereon.

SECTION I.

Of Bills of Exchange.

§ I. *Of the form of a Bill of Exchange.*

ART. 110. A bill of exchange is drawn from one place upon another.
It is dated.
It expresses:
1st. The sum to be paid,
The name of the person who is to pay the same,
The time when, and the place where, the payment is to be made,
The value received therefor, and whether in cash, merchandise, in account or in any other way.
It is drawn to the order of a third person, or of the drawer himself.
If it be not drawn singly, it mentions the number of bills contained in the set.

ART. 111. A bill of exchange may be drawn on one individual and payable at the domicile of another.

ART. 112. If a bill falsely state the name, addition or domicile

of any of the parties, the place where it is drawn, or that where it is payable, it is void as a bill of exchange, and operates only in law as a mere assumption or promise.

ART. 113. The signature of a woman, single or married, to a bill of exchange, has no effect, with respect to her, (if she is not a merchant or sole trader) but that of a mere assumption or promise.

ART. 114. Bills of exchange subscribed by minors not merchants, are null and void as to them, saving the respective rights of the parties, conformably to art. 1312 of the Napoleon code. (48)

§ II. *Of providing Funds or Effects for the Payment of a Bill of Exchange.*

ART. 115. The necessary funds or effects for the payment of a bill of exchange must be provided by the drawer, or by the person for whose account the bill is drawn, but the drawer is not thereby exonerated from his personal responsibility in case of non-payment.

ART. 116. Sufficient provision is made if, at the time when the bill becomes payable, the drawee is indebted to the drawer, or to the person for whose account it is drawn, in a sum at least equal to the amount thereof.

ART. 117. Acceptance is *primâ facie* evidence of effects in the hands of the drawee.

It is conclusive as between the drawee and indorsers.

The drawer of a bill of exchange, whether it be accepted or not, is alone bound to prove, if the fact be put in issue, that he had funds or effects in the hands of the drawee at the time when it became payable, otherwise, he is bound by his indorsement, though the protest be made after the time limited for that purpose.

§ III. *Of Acceptance.*

ART. 118. The drawer and indorsers of a bill of exchange are jointly and severally responsible for the acceptance and payment of the same, at the time when it becomes payable.

ART. 119. Non-acceptance is evidenced by an act called a *protest for non-acceptance*.

ART. 120. The drawer and indorsers on receiving notice of the protest for non-acceptance, are respectively bound to give security for its payment, when due, or for the reimbursement of the amount thereof, with costs of protest and re-exchange.

(48) That article provides, that the engagements contracted by minors, *interdicted* persons and married women, may be rescinded; and that nothing that has been paid to them by virtue of such contracts, can be recovered back, unless it be proved that it was employed for their benefit. On this principle if a minor had drawn a bill of exchange in consideration of monies received by him for necessaries or the like, although the bill of exchange would be declared void as a mercantile and negotiable instrument, yet the minor, when of full age, would be compelled to refund the money which he had received, on its being proved that it had been so applied.

The security either of the drawer or indorser is jointly and severally bound with his principal only. (49)

ART. 121. He who accepts a bill of exchange, contracts the obligation of paying the amount thereof.

The acceptance of a bill of exchange cannot be rescinded, even though the drawer should have previously failed, unknown to the acceptor.

ART. 122. The acceptance of a bill of exchange must be signed.

It is expressed by the word *accepted.*

It is dated, if the bill of exchange is made payable at one or more days or months after sight.

And in that case, the omission of the date of the acceptance makes the bill of exchange payable at the expiration of the term therein expressed, to be reckoned from its date.

ART. 123. The acceptance of a bill of exchange payable at another place than that where the acceptor resides, must point out the *domicile* (50) at which it is to be paid, and where the protest may be made, in case of non-payment.

ART. 124. An acceptance cannot be conditional, but it may be for less than the sum drawn for.

In that case, the bearer of the bill is bound to cause it to be protested for the overplus.

ART. 125. A bill of exchange must be accepted at presentation, or at the latest, within twenty-four hours after.

(49) The drawer and indorsers are jointly and severally bound with and for each other. See below, art. 140. But he who becomes security for one of them, is only jointly and severally bound with his principal, and not with the others.

(50) This word *domicile* is very frequently used in the French law. It has a general and a particular technical meaning. In the former sense it means the usual or accustomed dwelling, or place of residence of an individual; in the language of legal practice, it signifies a specific place of abode, declared, assumed or pointed out by an instrument or contract. In consequence of the maxim of the civil law *actor sequitur forum rei,* a person cannot be sued out of the place of his domicile. To ascertain this becomes, therefore, a matter of importance in contracts between individuals. Hence in notarial instruments, a clause is almost always inserted, stating, that the parties, for the purposes of that particular contract, have *elected* their domiciles at such or such place or places respectively. In case of non-performance, a summons may regularly be served at the place of the elected domicile, and if the party does not appear in consequence thereof, judgment goes against him by default. Otherwise his adversary could not sue him any where else than in the place of his usual residence, even though he were found transiently in the place where the contract was made; because the tribunals of that place could not be considered as his *forum,* and it would be a violation of the maxim, which we have cited above.

A bill of exchange, therefore, when not payable at the place where the acceptor resides, and of course at his domicile, which sometimes happens when the funds are lodged in the hands of another person who resides in a different place, must point out the domicile where payment is to be made, and it is usually done by an acceptance in this form: *Accepted at Bordeaux, this —— day of ——; payable at the domicile of A. B., merchant, in Nantz.* The legal effect of this special acceptance is, that the demand and protest must be made at Nantz and not at Bordeaux, and that judgment may be obtained against the acceptor at his elected domicile, and enforced at the place of his usual domicile, or wherever else he may be found.

The twenty-four hours being elapsed, if the bill be not returned with or without an acceptance, the person who kept it is answerable to the holder in damages.

§ IV. *Of Acceptance by Intervention.* (51)

ART. 126. A bill of exchange may be accepted at the time of the protest for non-acceptance, by a third party intervening on behalf of the drawer or of one of the indorsers.

The intervention is mentioned in the act of protest, and signed by the intervening party.

ART. 127. The intervening party is bound to give notice without delay, to the person in whose behalf he has intervened.

ART. 128. The holder of the bill of exchange retains all his rights against the drawer and the indorsers, in consequence of the non-acceptance thereof by the drawee, any acceptance by intervention notwithstanding.

§ V. *Of the Term of Payment.*

ART. 129. A bill of exchange may be drawn payable at sight,

At one or more days
one or more months } after sight,
one or more usances

At one or more days
one or more months } after date,
one or more usances

On a fixed or appointed day,

At a fair.

ART. 130. A bill of exchange drawn at sight, is payable at the moment when it is presented.

ART. 131. The term of payment of a bill of exchange drawn

At one or more days
one or more months } after sight,
one or more usances

is fixed by the date of the acceptance, or by that of the protest for non-acceptance.

ART. 132. An usance is thirty days from the day after the date of the bill of exchange.

The months are as established by the Gregorian calendar.

ART. 133. A bill of exchange payable at a fair, becomes payable on the eve of the day appointed for the breaking up of the fair, and on the day on which the fair is held, if it is not to last longer than one day.

ART. 134. If a bill of exchange become due on a legal holiday, it is payable on the eve of that day.

(51) This is what is called in the English law *an acceptance for the honour of the drawer or of one of the indorsers.* It was formerly so denominated in France. Why this ancient and generally understood mode of expression has been changed, we do not know. Perhaps the phrase has been thought too long.

ART. 135. All delays of payment of a bill of exchange, under the denomination of days of grace, favour, and other similar local customs and usages, are abolished.

§ VI. *Of the Indorsement.*

ART. 136. The property of a bill of exchange is transferred by indorsement.

ART. 137. The indorsement is dated;

It expresses the value received and the name of the indorsee.

ART. 138. If the indorsement be not made agreeably to the directions of the next preceding article, it does not effect any transfer of property, and gives only a naked authority. (52)

ART. 139. The antedating of orders or indorsements is prohibited under the penalty of forgery.

§ VII. *Of joint and several Responsibility.*

ART. 140. All those who have signed, accepted or indorsed a bill of exchange, are jointly and severally responsible to the holder thereof.

§ VIII. *Of the Guarantee called AVAL.*

ART. 141. The payment of a bill of exchange, independent of the acceptance and indorsement, may be guaranteed by *aval.* (53)

ART. 142. This guarantee is given by a third person, either on the bill itself or by a separate instrument.

The *guarantor* is responsible in the same manner as the drawers and indorsers, unless there be a stipulation to the contrary.

§ IX. *Of Payment.*

ART. 143. A bill of exchange must be paid in the money therein mentioned.

ART. 144. He who pays a bill of exchange before it is due, is responsible for the validity of the payment.

ART. 145. He who pays a bill of exchange when due, without opposition or notice to the contrary, is presumed to be legally exonerated. (54)

(52) Of course a blank indorsement does not transfer the property in a bill of exchange. It was so determined likewise, by the ordinance of 1673. tit. 5. art. 23.

(53) The word *aval* (*à valle*) in the old French idiom means *below* or *at the bottom*, and is opposed to the now obsolete word *amont* (*à monte*) which formerly signified *above* or *at the top*. These guarantees have been called *avals*, very probably from their being usually written *at the foot*, as an *indorsement* is so denominated from its being written *on the back* (*in dorso*) of a bill of exchange. In English, we say simply a *guarantee*, without adverting to its being written at the top or foot, or on the back of the instrument.

(54) This article is meant to settle the long agitated question of *forged indorsements*. Pothier, Jousse and other commentators on the ordinance of 1673, strenuously contended for the application of the principle *nemo plus juris dare potest*

ART. 146. The holder of a bill of exchange cannot be compelled to receive the payment thereof before it is due.

ART. 147. The payment of a bill of exchange, made on the second, third, fourth, &c. of the set, is valid when such second, third, fourth, &c. expresses that one being paid, the others are null and void. (55)

ART. 148. He who pays a bill of exchange on the second, third, fourth, &c. of the set, and does not get back the number on which he subscribed his acceptance, is not exonerated with regard to a third person who may be the holder thereof.

ART. 149. The payment of a bill of exchange cannot be refused or resisted, except in case of the loss of the bill, or the failure or bankruptcy of the holder.

ART. 150. If a bill of exchange, not accepted, be lost, the holder may demand payment thereof on a second, third, fourth, &c. of the same tenor.

ART. 151. If the lost bill of exchange be accepted, the payment thereof cannot be demanded on a second, third, fourth, &c. except by a judge's order, and on giving security.

ART. 152. If he who lost the bill of exchange, whether accepted or not, cannot produce the second, third, fourth, &c. he may nevertheless demand payment of the lost bill, by a judge's order, on proving his property therein by his books and giving security.

ART. 153. If payment be refused on a demand made by virtue of the two next preceding articles, the owner of the lost bill of exchange may preserve all his rights by a protest in due form.

The protest must be made, on the day after that on which the lost bill of exchange became payable.

Notice thereof must be given to the drawer and indorsers, in the form and within the periods herein after prescribed for giving notice of a protest.

quam ipse habet, and of course were of opinion, that the acceptor who had paid a bill of exchange, was not discharged, if one of the indorsements should afterwards be proved to have been forged. This code seems to place the subject on a more equitable footing, by presuming in the first instance, the payment to have been legally made, and putting the last *bonâ fide* holder of the bill to the proof of fraud or gross neglect on the part of the drawee. The reasons given by the counsellors of state for the enactment of this article, appear founded on solid commercial grounds: "Bills of exchange," say they, "that species of money, coined with the "stamp of commerce, and thrown at once into general circulation, which traverses with so much rapidity, so many cities and states, which becomes in so "short a time the successive property of so great a number of persons, whose "names and signatures are unknown to him who is to pay its amount at a precise "fixed time, and sometimes at the day and at the very moment when it is presented to him, cannot, ought not to be assimilated to the generality of contracts and to be governed precisely by the same rules."

(55) The French law not being so strict in its construction as the common law of England, it may be well, perhaps, to explain here, that the identical words of the text need not to be expressed in a French bill of exchange, and that it is sufficient if their meaning be necessarily implied, as is the case in the generally received form: *Pay by this my first of exchange (the second, third and fourth being unpaid,)* &c.

ART. 154. The owner of a bill of exchange which has been lost or mislaid, must, in order to obtain a second, apply to his immediate indorser, who is bound to lend him his name and assistance for a similar application to his own indorser, and so on from indorser to indorser, up to the drawer of the bill. The owner of the lost or mislaid bill bears all the charges.

ART. 155. The obligation of the security mentioned in art. 151 and 152, ceases after the expiration of three years, if during that time there has been no demand or suit commenced.

ART. 156. The payments made on account of the amount of a bill of exchange, operate to the discharge of the drawer and indorsers.

The holder is bound to have the bill of exchange protested for the sum which remains to be paid.

ART. 157. No delay can be granted by the judges for the payment of a bill of exchange. (56)

§ X. *Of Payment by Intervention.* (57)

ART. 158. A protested bill of exchange may be paid, by any person intervening on behalf of the drawer, or of one of the indorsers.

The intervention and payment shall be mentioned, in the protest or at the foot of the same.

ART. 159. The person who pays a bill of exchange by intervention, succeeds to the rights of the holder, and is bound to go through the same formalities.

If the payment by intervention be made for the account of the drawer, all the indorsers are discharged.

If for the account of one of the indorsers, the subsequent indorsers are discharged. (58)

If several persons offer at the same time to pay a bill of exchange by intervention, he whose payment goes to operate the discharge of a greater number of persons, shall be preferred. (59)

If the drawee who occasioned the bill to be protested for non-acceptance, offers to pay the same, he shall be preferred to all others.

§ XI. *Of the Rights and Duties of the Holder.*

ART. 160. The holder of a bill of exchange drawn on the Eu-

(56) The commercial tribunals in France have an equitable power to grant time in certain cases, for the payment of money acknowledged to be due. By this article they are restricted from exercising it with respect to bills of exchange.

(57) Payment for the honour of the drawer or of one of the indorsers. See above, note (51).

(58) Because the person who pays a bill for the honour of the drawer or of one of the indorsers, is presumed to do it on the credit of the person for whom he pays, and to look to him only.

(59) That is to say, he will be preferred, who offers to pay for the honour of the party who is the farthest removed from the last indorser.

ropean continent or islands, and payable in the European possessions of France, either at sight or at one or more days, months or usances after sight, must demand payment or acceptance thereof within six months from its date, otherwise he shall lose his recourse against the indorsers, and even against the drawer, if the latter had effects in the hands of the drawee.

The term is of eight months for a bill of exchange drawn in the ports of the Levant and the Northern coast of Africa, on the European possessions of France, and reciprocally, from the European continent and islands, on the French establishments in the Levant and the Northern coast of Africa.

It is of one year for a bill of exchange drawn on the Western coast of Africa, as far as the Cape of Good-Hope inclusively.

It is also of one year for a bill of exchange drawn on the American continent or in the West India islands, and payable in the European dominions of France, and reciprocally, for a bill drawn on the continent or islands of Europe, to be paid in the French dominions or settlements on the Western coast of Africa, on the American continent or in the West India islands.

The term is of two years for a bill of exchange drawn on the continent or islands of the East Indies, to be paid in the European possessions of France, and reciprocally, for a bill drawn on the continent or islands of Europe, to be paid in the French dominions or settlements situated on the continent or islands of the East Indies.

The above terms of eight months, one, and two years, are doubled in a season of maritime war.

Art. 161. The holder of a bill of exchange must demand payment thereof, on the day when it becomes payable.

Art. 162. The non-payment must be evidenced by an act or instrument called *protest for non-payment*, which is to be made on the day next ensuing that on which the bill became payable.

If that day be a legal holiday, the protest is to be made on the day next following.

Art. 163. The holder of the bill of exchange, is not dispensed from protesting for the non-payment thereof, either by its having been protested for non-acceptance, or by the death or failure of the drawee.

In case of the failure of the acceptor before the bill becomes due, the holder may cause it to be protested, and pursue his legal remedy.

Art. 164. The holder of a bill of exchange protested for non-payment, is intitled to his action of guarantee. (60)

Either against the drawer and each of the indorsers severally,

Or against the indorsers and the drawer jointly.

(60) This action is so denominated from its object, but requires no particular form of proceeding different from other actions. Suits in French courts are in the nature of our bills in equity; they do not restrict the suitor to particular *formulæ* of pleading; it is enough if he states his case clearly, according to the nature thereof.

Every indorser is intitled to the same action, and in the same manner, against all the preceding indorsers.

ART. 165. If the holder will proceed severally against his immediate indorser, he must give him notice (61) of the protest, and in default of payment, institute his suit against him, within fifteen days after the date of the protest, if the said indorser reside within the distance of five *myriamètres*. (62)

If the indorser reside at a greater distance than five *myriamètres* from the place where the bill of exchange is payable, the time shall be enlarged, as to him, at the rate of one day for each two and an half *myriamètres* (63) over and above the five *myriamètres* already mentioned.

ART. 166. As to bills of exchange drawn in France and payable out of the continental territory of France in Europe, the legal remedy must be pursued against the drawers and indorsers thereof, residing in France, within the periods herein after mentioned, to wit:

Two months for bills payable in Corsica, the islands of Elba or Capraja, in Great Britain, and the states bordering upon France.

Four months for those payable in the other states of Europe.

Six months for those payable in the ports of the Levant and the northern coast of Africa.

One year for those payable on the Western coast of Africa as far as the Cape of Good Hope inclusively, and in the West Indies.

Two years for those payable in the East Indies.

These terms shall be observed in the same proportions, for the remedy to be pursued against drawers and indorsers residing in the French dominions out of Europe.

The above terms of six months, one, and two years, shall be doubled during the prevalence of maritime war.

ART. 167. If the holder pursue his remedy against the indorsers and the drawer jointly, he is intitled, as to each of them, to the benefit of the terms prescribed by the next preceding article. (64)

(61) This notice is given through the medium of an officer of justice, and is the first step towards the institution of a suit. No evidence of a private or extrajudicial notice, by letter or otherwise, is admitted in a court of law or commerce. The code (which in this and many other points, is conformable to the ancient law established by the ordinance of 1673) allows the full term of fifteen days, as well to give the notice, as to institute the action of guarantee, against the drawer or indorser. It is sufficient if given at any time within that period, provided the suit be also brought before its expiration. The notice is included within what is called in art. 166, the *legal remedy*.

(62) Ten leagues, or thirty miles. This is also conformable to the ancient ordinance.

(63) Five leagues or fifteen miles; this is likewise copied from the ordinance of 1673.

(64) This must not be understood, however, successively, that is to say, that the bearer has fifteen days or more to give notice to the drawer, and as much after-

Each of the indorsers is intitled to the same remedy, jointly and severally, within the same several and respective periods or terms, which, with respect to them, begin to run from the day next following that on which the party has been served with a judicial citation.

Art. 168. After the expiration of the above several and respective terms:

For the presentation of the bill of exchange drawn at sight, or at one or more days, months or usances after sight,

For the protest for non-payment,

For instituting the action of guarantee,—the holder of the bill of exchange is no longer intitled to any right or claim against the indorsers.

Art. 169. The indorsers are likewise barred of their action of guarantee against the prior indorsers, after the expiration of the term or terms applicable to them respectively.

Art. 170. The drawer and indorsers are barred in the same manner as against the drawer himself, if he prove that he had effects in the hands of the drawee, at the time when the bill became payable.

In such case, the holder has no right of action but against the drawee.

Art. 171. If, however, either the drawer or any one of the indorsers, have,—since the expiration of the terms respectively limited for the protest, the notice thereof, and the institution of the suit,—received by way of mutual account, set-off or otherwise, the funds which were intended for the payment of the bill of exchange; in such a case, the action of the holder against them is not barred, any thing in the three next preceding articles notwithstanding.

Art. 172. Independent of the formalities required to intitle a party to his action of guarantee, the holder of a bill of exchange may, with a judge's order first had and obtained, lay an attachment (65) on the movable effects of the drawers, acceptors and indorsers.

§ XII. *Of the Protests.*

Art. 173. Protests for non-acceptance or non-payment are made by two notaries, or by one notary and two witnesses.

The protest must be made:

At the domicile of the drawee, or at his last known place of residence.

wards, to do the same to each of the indorsers, but he may sue and recover against them jointly and severally, provided he gives notice to, and causes process to be served upon each and all of them, within the term prescribed.

(65) *Saisir conservatoirement les effets*, &c. The form and effect of this proceeding are as follows: The plaintiff with a short petition to the judge, exhibits the writing or instrument which contains the *primâ facie* evidence of his claim, and which in the French law is called his *title* (*son titre*) being only a shorter way of expressing what we would call his *evidence of title*, and prays that the effects of his debtor may be attached *conservatoirement*, that is to say, for the preservation of his right, so that they may not be made away with, and he deprived of his eventual

At the domicile of the persons pointed out in the bill of exchange to pay the same *in case of need.* (66)

At the domicile of the acceptor by intervention.

The whole must be done by a single act or instrument.

ART. 174. The protest contains:

The literal copy of the bill of exchange, acceptance, indorsements and directions inserted therein.

The demand of payment of the amount of the bill of exchange.

It declares:

The absence or presence of the drawee,

The motives for refusing payment, and the refusal or inability to sign.

ART. 175. No act or formality on the part of the holder of a bill of exchange can supply the place of a protest, except in the cases provided by art. 150 and those following, concerning the loss of a bill of exchange.

ART. 176. Notaries and *huissiers* (67) are bound under the penalty of removal from office and of damages and costs, to be paid to the parties, to deliver exact certified copies of the protests by them made, and to enter them at full length, day by day, and in order of dates, in a special register numbered and flourished, and kept in the form prescribed for similar books of record.

§ XIII. *Of Re-exchange.*

ART. 177. Re-exchange is effected by re-drawing;

ART. 178. A re-draft is a new bill of exchange, which the holder of a protested bill draws upon the drawer or indorsers, by means whereof (68) he procures his reimbursement of the principal

remedy. If the *title* appear fair and regular, the attachment is granted of course; but the defendant may, if he pleases, immediately institute a proceeding before the judge called an *opposition*, which is in nature of our rule to show cause why the attachment should not be dissolved. The judge on a summary hearing either maintains or dissolves the attachment; and if he thinks that there is good cause to maintain it, it remains a lien on the property attached notwithstanding any appeal to a superior court, and until a final decision in the cause. Other *oppositions* may also be made by contending creditors, or by third persons claiming an interest in the property attached, and they are all decided upon in like manner.

(66) It happens frequently in France that bills of exchange are drawn payable at the domicile of A B, the drawee, and *in case of need*, (*au besoin*) at the domicile of C D, a third person, who has orders to supply the drawee with funds, or is instructed to pay on his default. In such case, the protest must be made at the domicile of the payer *in case of need*, as well as at that of the original drawee.

(67) *Huissiers*, literally, and etymologically *ushers*, both words being derived from the old French word *huis*, a door, and from their having been originally *porters*, or *doorkeepers*. This denomination is now given to the ministerial officers of French courts of justice, answering to our sheriff's officers, or bailiffs. Besides their ordinary functions as *apparitors*, they are authorized, concurrently with public notaries, to protest bills of exchange and promissory notes, and to serve all legal notices between parties, of which service their certificate is authentic proof. The criers of courts are called *huissiers audienciers.*

(68) That is to say, by negotiating it on the spot, and converting it into money

amount of the protested bill, together with his costs and charges, and the new exchange which he pays.

ART. 179. The rate of re-exchange is regulated with respect to the drawer, at the course of exchange between the place where the bill of exchange was payable, and the place where it was drawn.

It is regulated as to the indorsers, by the course of exchange between the place where the bill of exchange was delivered or negotiated by them, and the place where the reimbursement is to be effected.

ART. 180. A re-draft is accompanied with an account of re-drawing.

ART. 181. The account of re-drawing contains:

The principal amount of the protested bill of exchange,

The cost of protest and other lawful expenses, such as banking commission, brokerage, stamp duties and postage.

It mentions the name of the person on whom the re-draft is made, and the rate of exchange at which it is negotiated.

It is authenticated by an exchange agent.

In places where there is no exchange agent it is certified by two merchants.

To it is annexed the protested bill of exchange, the protest, or an authenticated copy thereof.

In case the re-draft be on one of the indorsers, it is likewise accompanied with a certificate attesting the course of exchange between the place where the original bill was payable, and that where it was drawn.

ART. 182. No more than one account of re-drawing can be made concerning the same bill of exchange.

The account of re-drawing is repaid by one indorser to the other respectively, and finally by the drawer.

ART. 183. Re-exchanges cannot be cumulated. Each indorser as well as the drawer may be charged with one and no more.

ART. 184. The interest of the principal of a bill of exchange, protested for non-payment, is due from the day of protest.

ART. 185. The interest of the cost of protest, re-exchange and other lawful expenses, is only due from the day on which the suit is instituted.

ART. 186. No re-exchange is due, if the account of redrawing is not accompanied with the certificates of exchange agents or merchants, as prescribed by art. 181.

SECTION II.

Of Promissory Notes.

ART. 187. All the laws relative to bills of exchange, and concerning

The time of payment,

Indorsement,

Joint and several Responsibility,

Guarantee by *aval*,
Payment by intervention,
The duties and rights of the holder,

Re-exchange and interest thereon, (69)—are applicable to promissory notes, without prejudice to what is provided with respect to the cases mentioned in art. 21, 22 and 23 of tit. 2. book iv.

ART. 188. A promissory note is dated.

It states:
The sum to be paid,
The name of the person to whose order it is made,
The time of payment,
The value received, and whether in cash, merchandise, account, or in any other manner.

SECTION III.

Of Prescription or Limitation of Actions.

ART. 189. All actions relative to bills of exchange, and promissory notes subscribed by merchants, traders or bankers, or given in the course of commercial transactions, are barred after the lapse of five years from the day of the protest, or that of the last judicial proceeding, if there has been no judgment, or if the debt has not been acknowledged by a separate *act* or instrument of writing.

The alleged debtors shall, nevertheless, be bound, if required, to make oath that they are no longer indebted; and their heirs, widows and other representatives shall swear that they verily believe that nothing remains due. (70)

(69) The idea of re-exchange on a promissory note may appear new; yet it necessarily flows from the principle, now every where established, of the negotiability of promissory notes, and their assimilation in that respect to bills of exchange. That principle was not admitted without difficulty in England, in consequence of the unfortunate anti-commercial prejudices of lord Holt, who supposed it to be a modern invention of the *Lombard street brokers*, and denied its being founded on the *general custom of merchants*. See 2 Lord Raym. 751. But it is certain that it was established on the continent of Europe, long before the time of that excellent judge, whose memory in other respects is justly held in the highest veneration. Pope Pius V. recognises it in his canon or *extravagant de Cambiis*, made in the year 1571, and in his *pragmatic* of the 11th of July, 1568. "There "are," says his holiness, "three species of EXCHANGE. The first, when small "money is exchanged for coin of a greater value, or *vice versâ*. The second is "by *bills*, by which money at home is exchanged for money abroad. The third "is by NOTES, by which money actually present is *exchanged* for absent money, "that is to say, for money payable at a future day, though in the same place." Hence promissory notes were formerly called in France, *notes* or rather *bills of exchange* (*billets de change*) as contradistinguished from *lettres de change*. See the ordinance of 1673, tit. 5. *passim*. Thence probably the English denomination of *bills of exchange* was originally derived, and was applied to that species of negotiable paper then in most frequent use.

The Italians have been our masters in the science of mercantile law. There is much yet to be gleaned from their valuable writings.

(70) The statutes of limitation in France are no bar to an action, unless the party who claims the benefit of them, will also make oath, that the debt is no longer due.

BOOK II.

Of Maritime Commerce.

TITLE I.

Of Ships and Vessels.

ART. 190. All ships and vessels are reputed movables.

They are, however, assimilated to real property (71) in point of liability for the debts of the vender, and especially those which are by law declared to be privileged. (72)

ART. 191. The several debts herein after specified are privileged in the following order of priority, to wit:

1. All judicial costs and other expenses incurred in procuring the sale of the vessel, and the distribution of the proceeds thereof.
2. Pilotage, tonnage and wharfage. (73)
3. The wages of the guardian or keeper, and expenses for the safe keeping of the vessel, from her entry into port until the sale thereof.
4. The storage of her rigging, tackle and apparel.
5. The charges for keeping in good order and repair the vessel, her rigging and apparel, from the time of her entering into port from her last voyage.
6. The wages of the master and crew employed in her *last voyage*. (74)
7. The sums lent to the master for repairs or other necessaries for his vessel (75) during her last voyage, and the

(71) The words "*assimilated to real property*" are not in the original, but they appeared to us necessary to make the article understood by those who are not conversant in the French law. The words in the text are, *seront affectés aux dettes du vendeur*, which means that they shall be subject, though in the hands of a purchaser, to the same liens by which real property is bound. For instance, if a similar law were in force in the United States, it would follow, that ships would be bound, in the same manner as lands by a judgment of record. In France, the system of liens is carried to a great degree of perfection, by a variety of legal provisions, which, although originating in the spirit of fiscal legislation, are nevertheless admirably well calculated for the security of the creditor and the prevention of fraud.

(72) This means that they are intitled to a priority of lien, and of course to a priority of payment. The term *privileged debts* is used in the same sense in the English law, and is applied to those debts which executors and administrators are bound to pay in the first instance.

(73) And other similar charges and duties payable by the vessel only. There are several such enumerated in the text, such as *droits de cale, bassin, avant bassin*, which, as they are not in use in this country, we have thought it unnecessary to insert or explain.

(74) On a similar principle it is provided by the British statute, 8 Ann. c. 14., that a landlord cannot demand or receive more, than the amount of the *last year's* rent, out of the proceeds of his tenants' goods taken in execution.

(75) By the general maritime law every contract with the master of a ship (such, of course as he is authorized to make) gives a lien upon the vessel, though there be no special hypothecation; but it is otherwise by the law of England. 2 L. Raym. 806. But *quære*, whether such an implied lien given abroad, would be held to follow the vessel to this country?

reimbursement of the price of the merchandise sold by him for the same purpose.

8. The sums due to the vender, ship-chandlers, material-men, (76) workmen and other persons employed in the building of the vessel, if she has not yet performed a voyage; and those due to any creditors for work and labour done and performed, or for articles furnished for the repairing, victualling, manning, equipping and fitting out the vessel before her departure, if she has already performed a voyage.
9. The sums lent on bottomry, for provisions, refitting and equipment before the sailing of the vessel.
10. The amount of the premiums of insurances made on the ship, her rigging and apparel, and on her outfits and equipments for her last voyage.
11. The indemnity due to the affreighters (77) for the non-delivery of merchandise shipped by them, or for damage suffered by the said merchandise through the default of the master or crew.

If the proceeds of the sale be insufficient, the several creditors mentioned in each of the foregoing numbers, or paragraphs, shall come in, *pari passu*, in proportion to their respective demands.

Art. 192. In order to intitle the creditors to the benefit of the privilege granted to them by the preceding article, their several debts must be proved in the manner and form following, to wit:

1. Judicial costs shall be proved, by the bills thereof, taxed by the competent tribunal.
2. Tonnage and other duties—By the legal acquittances of the collectors.
3. The debts specified in Nos. 3, 4 and 5 of article 191—By accounts examined and approved by the president of the tribunal of commerce.
4. Mariners' wages—By the records of the office of maritime inscription. (78)

(76) Material-men are shipbuilders, ropemakers, &c. and all such as furnish tackle, furniture or provisions for the repairing of ships or setting them out to sea. 2 Brown's Civ. and Adm. Law, 75. 81.

(77) The French language very properly distinguishes between the *freighter* and the *affreighter*. The *freighter* is he who lets out, and the *affreighter* he who takes a ship or part of a ship to freight or hire. In our idiom the word *freighter* (and in common parlance *charterer*) is applied indiscriminately to both, which not unfrequently produces confusion. We have ventured to adopt the French distinction, and to introduce the word *affreighter* from *affreightment*, with the less reluctance, as it appears sufficiently warranted by the analogy of the English language.

(78) These offices of *maritime inscription* have succeeded the *Bureaux des classes*, which were established under the regal government. Before a vessel puts to sea, the master is bound to appear there with his mariners; and their names, ages, places of birth, and abode, together with the conditions of their agreement for the voyage, are recorded in a document called the *rôle d'équipage*, a copy of

5. The sums lent and the value of the merchandise sold to procure necessaries for the vessel during her last voyage —By accounts approved by the master and supported by *procès verbaux*, signed by the said master and principal officers and mariners, proving the necessity of the loans.
6. The sale of the ship or vessel—By an act or instrument, bearing a certain date, (79) and the work and labour done, and articles furnished for fitting out, equipping, manning and victualling the ship, by bills or accounts, invoices or statements examined by the master and approved by the owner of the said vessel, a duplicate of which shall be deposited of record in the registry of the tribunal of commerce, before the departure of the said vessel, or at the latest, within ten days after her departure.
7. The sums lent at maritime risk before the departure of the vessel, upon her body, rigging, apparels, and outfits—By bottomry bills or contracts in due form, executed before notaries, or made under private signatures, duplicates of which shall be deposited in the registry of the tribunal of commerce, within ten days from their respective dates.
8. Premiums of insurance—By the policies or extracts from the books of insurance brokers.
9. Indemnities due to affreighters—By judgments of tribunals, or awards of arbitrators.

Art. 193. The privileges of the creditors are at an end independently of the general rules of law by which obligations may be extinguished,

By the judicial sale of the vessel, made according to the forms prescribed in the second title of this book.

Or when after a voluntary (80) sale, the vessel shall have performed a voyage in the name, and at the risk of the purchaser, without opposition from the creditors of the vendor.

Art. 194. A vessel is reputed to have performed a voyage,

When after sailing from one port and being out thirty days, she has arrived at another, and her sailing and departure are legally proved:

which is delivered to the master, on which also, are to be indorsed in the presence of a French magistrate or consul all the payments which are made to the seamen in the course of the voyage. On the ship's return to port, the master and crew again appear at the same office, where the account of each mariner is settled from the *data* appearing on the face of the *rôle d'équipage*, and the captain is obliged to pay what is thus found to be due to each of them. The certificate of the officer is equivalent to an exemplification of a judgment of record.

(79) No instrument is considered in France as having a certain date, (as against third persons) except notarial instruments, official acts, and judicial records. Private writings are said to have *no date*, that is to say, no person is bound to take notice of them. But they receive a date from the moment that they are filed, or as the French express it, deposited of record, in the office of a public notary, or registry of a court.

(80) The word *voluntary* is used here as opposed to *compulsory*. It is used elsewhere in another sense, of which we shall take notice in the proper place.

When although she has not arrived at another port, more than sixty days have elapsed from her departure to her arrival, at the same port from whence she sailed, or when having sailed on a distant voyage (81) she has been more than sixty days at sea, and the creditors of the vendor have exhibited no claim.

Art. 195. The voluntary sale of a vessel must be made in writing;—it may either be done by a public act, or by an instrument under private signatures.

The sale may be made of the whole or part of the vessel, whether she be at sea, or in port.

Art. 196. The voluntary sale of a vessel at sea does not prejudice the creditors of the vendor.

Consequently, such vessel, or the price thereof, continues, notwithstanding such sale, to be the security of the said creditors, who even may, if they think proper, set it aside as fraudulent.

TITLE II.

Of the Seizure and Sale of Ships and Vessels.

Art. 197. All ships and vessels may be seized and sold by judicial authority, (82) and the privilege of the creditors shall be extinguished by the following formalities.

(81) *Voyage de long cours.* Voyages from France to Russia, Greenland, Canada, Newfoundland, the islands and coasts of America, Cape de Verd islands, the coast of Guinea, and all beyond the tropic, are reputed *voyages de long cours.* Ordin. of 1681. L. 3. tit. 6. art. 59. See also *post.* art. 377.

(82) The sale, but not the seizure, is made by judicial authority. Writs of execution, or special mandates of a court directed to a ministerial officer, and ordering him to execute a judgment in a particular manner, such as our writs of *fieri facias, capias ad satisfaciendum, levari facias* and others, are unknown to the French law. An authentic copy of the judgment is the only warrant required to enable the officer to proceed to execute the same.

Nor are judgments the only acts that are thus executory. All debts created by instruments made in the presence of notaries and duly recorded, are so likewise, and are said in the French law phraseology to have *execution parée* (*parata executio.*) Nothing more is necessary in order to proceed to execution thereon, than to put an engrossed exemplification thereof attested under the seal of a court of justice into the hands of a ministerial officer, who on receipt of it intimates a command to the defendant to pay the money within a short given period, and in default thereof proceeds to the execution, which may be done in various ways. 1. By *saisie mobiliaire.* This is a levy on the defendant's goods and chattels, which is proceeded in much in the same way as a *fieri facias* is with us. The goods are sold of course, unless the money is paid in eight days after the levy. 2. By *saisie arrêt,* which is in nature of an attachment of the monies due to the defendant in the hands of third persons; the garnishee is summoned to appear before the court, and the matter is decided upon summarily, as it would be with us on a motion, unless some circumstances appear which require a more solemn investigation. 3. By *saisie réelle.* This means a levy on real property, which, like other executions, is made of course, but the sale cannot take place unless by an order of the court. At the time of making the levy, the officer cites the defendant to appear before the court on a certain day, to show cause why the sale of the property seized shall not be decreed, and if no cause is shown, it is ordered of course. The seizure of ships treated of in the title, which immediately follows, is in nature of a *saisie réelle,* ships, as we have observed before, being in this respect assimilated to real property. But the proceedings, which in the case of the *saisie réelle* have been, in order to favour the great landholders, loaded with a number of nice and tedious formalities, that often baffle the skill of the ablest practitioners, are

ART. 198. A ship or vessel cannot be seized before the expiration of twenty-four hours after the command to pay.

ART. 199. Such command must be intimated to the owner of the vessel in person, or left at his domicile, if the process is at the suit of a general creditor.

But if it be at the suit of a creditor whose debt is privileged within the provisions of art. 2., the service of such command on the master of the vessel will be good.

ART. 200. The *huissier* states in his procès-verbal, (83)

The name, profession and place of abode of the creditor for whom he acts;

The document which is the warrant for his proceeding;

The amount of the debt for the recovery of which the proceeding takes place;

The domicile elected by the plaintiff, as well in the town or place where the court is held which has cognizance of the cause, as in that where the vessel is moored; (84)

The names of the owners and master of the vessel;

Her name, description and tonnage.

He enumerates and describes her boats, rigging, out-fits and provisions.

He places a guardian or keeper on board.

ART. 201. If the owner of the vessel seized resides within the

greatly simplified with respect to ships, although in substance they appear to be the same. 4. By arrest of the defendant's body, which the French law calls *contrainte par corps* (*coercion by imprisonment.*) But this can never take place, except on a decree containing a clause to that effect, nor can such a decree be made, but in the cases provided by law. All judgments on mercantile contracts contain the clause of *contrainte par corps.*

Every execution is preceded by a notice of the judgment duly served on the defendant, and accompanied with a command to pay within a given time, or otherwise, that execution of the judgment shall be made. Such is the regular course of the civil law. In the court of admiralty in England, which proceeds according to the forms of the Roman system of jurisprudence, an execution is always preceded by a monition to the defendant to pay the money decreed within fifteen days, which is styled a *monition for sort principal and costs.* Mariott's Formulare Instrument. p. 334.

We have thought that this explanation would not be useless to enable our readers to understand the full meaning of many things contained in this and the succeeding titles.

(83) We have already explained in the notes to the second title of the first book, the nature and meaning of a *procès verbal.* In this case, it might be called the *return* of the officer, if it were made in pursuance of an order from some tribunal, but he is not even bound to certify it to the court, unless called upon so to do. It is, nevertheless, the foundation of the suit which takes place in order to obtain or prevent the sale of the property, if that may be called a suit, the first step towards which is an execution. We are not, however, without some analogous proceedings, in our own law; such, for instance, as the mode of inforcing the payment of rents by distress, and the summary process which takes place on obligations coupled with warrants of attorney to confess judgment. With some immaterial variances in the forms, the principle on which these legal remedies are founded, appears to be precisely the same with that of the *parata executio* of the French law. The courts may always set those executions aside, on cause shown.

(84) The plaintiff must elect a domicile in both those places, that he may regularly be served there with legal process, if there be occasion.

jurisdiction of the tribunal, the plaintiff must within three days, cause a certified copy of the procès-verbal of seizure to be served upon him, and cause him to be summoned to appear before the tribunal, to show cause why the sale of the vessel shall not be decreed.

If the owner do not reside within the jurisdiction of the tribunal, the copy and summons are served on the master of the vessel under seizure, and in his absence on his representative or that of the owner, and the term of three days is to be inlarged by one day for each two and half *myriamètres* distance from the place of his domicile.

If the owner be a foreigner, residing out of France, the copy of the procès-verbal and summons are to be served according to the directions of art. 69 of the code of civil proceedings.

ART. 202. If the vessel under seizure be of less than ten tons burthen, three proclamations shall be made, and three public notices given of the intended sale.

These proclamations shall be made and public notices given once a week, during three successive weeks, at the exchange and in the principal square of the town where the vessel is moored.

Notice thereof shall be also given by an advertisement in one of the newspapers printed in the city, or town where the court is held, and if there be no newspaper printed there, the advertisement shall be inserted in one of those printed in the department.

ART. 203. Written or printed notices are also affixed or posted up within two days after each proclamation,

On the main mast of the vessel under seizure,

In the public square of the town or place, and on the wharf where the vessel is moored, and also at the exchange.

ART. 204. The proclamations, notices and handbills must state:

The plaintiff's name, profession and place of abode;

The documents or evidences of title on which his demand is founded;

The amount of the sum due to him;

The domicile which he has elected in the city or town where the court is held, and in that where the vessel is moored;

The name and domicile of the owner of the ship;

Her name and that of the master, and whether she is fitting out or ready for sea;

Her tonnage;

The place where she is lying or afloat;

The name of the plaintiff's attorney;

The first setting up at auction and the first bid;

The days appointed for further biddings in open court. (85)

(85) Individual sales in France are made at the bar of a court of justice, in the presence of a judge, who superintends the same, and by his decree *adjudges* the property to the last and highest bidder. Hence those sales are called *adjudications*. No bill of sale is made to the purchaser. A copy of the judge's decree and the proper officer's receipt for the purchase money are his only evidences of title.

Art. 205. After the first setting up or outcry, the biddings are to be continued on the day mentioned in the handbill.

The judge who is appointed to superintend the sale, continues to receive the bids from week to week upon a certain day by him appointed.

Art. 206. After the third setting up, the vessel is adjudged on the extinction of the lights (86) to the last and highest bidder, without any other formality.

The judge may grant one or two postponements, each of one week.

Notice thereof shall be given by proclamations and handbills.

Art. 207. If the vessel under seizure be a barque, shallop, boat, or other small craft of ten tons burthen or under, the sale shall be definitively concluded at the first court after proclamation, made on three successive days on the wharf, and handbills posted up on the mast if there be any, or on the most conspicuous part of the vessel, and at the courthouse door.

The sale shall not take place until the expiration of eight complete days after the notice of the seizure.

Art. 208. The judicial sale of the vessel puts an end to the functions of the master, saving his claim for damages against all whom it may concern.

Art. 209. The purchasers of the vessel (of whatever description) shall be bound within four and twenty hours after the decree of adjudication, to pay the purchase money or bring in the same, without costs or charges, into the registry of the tribunal of commerce, under pain of being compelled thereto by imprisonment. (87)

If the money be not paid or brought into court as aforesaid, the vessel shall again be exposed to sale and definitively sold three days after the issuing of one single new proclamation and public notice, at the expense and risk of the defaulters, who shall be compelled by arrest of their bodies to pay the deficiency with damages and costs.

Art. 210. All applications of third persons claiming an interest in the property seized, for severing their interest from that of the defendant, must be made and filed in the registry, before the sale is consummated by a decree of adjudication.

If such applications be only made after the adjudication has taken place, they shall be, of course, converted into *oppositions* to the payment of the proceeds of the sale.

Those sales are conducted with great form; long, minute and excessively tedious *procès verbaux* are made of every thing which takes place there, to the great emolument of the officers of justice, who receive stated fees for each sitting called *vacation*. The amount of those fees is not a little increased by the circumstance that the sales (unless the property be of trifling value) are never concluded in one day, but are adjourned from time to time, in order, it is said, to give a fairer chance to the bidders.

(86) These sales are made according to ancient form, *by inch of candle.*

(87) That is to say, by a summary decree containing the clause of *contrainte par corps*, as above mentioned, note 82.

Art. 211. The applicant or opponent shall have three days allowed him to state the grounds of his application or opposition.

The defendant shall have three days to give in his answer.

The cause shall be brought to a hearing on a simple citation.

Art 212. Oppositions to the payment of the proceeds of the sale, shall only be received within three days after the adjudication. After the expiration of that time, they shall no longer be admitted.

Art. 213. The opposing creditors shall be bound to exhibit and file in the registry the evidences of their debts, within three days after the service of a citation upon them to that effect, by the creditor who is plaintiff in the attachment, or by the garnishee; in default whereof, they shall be excluded from the distribution of the proceeds of the sale.

Art. 214. The admission of the creditors and the distribution of the monies, are made, as to privileged creditors, according to the order of priority prescribed by tit. 1. art. 2. of this book; all other creditors (88) come in together *pari passu*, in proportion to their respective demands.

Every admission of a claim includes principal, interest and costs.

Art. 215. A ship on the point of sailing is not liable to be seized, except for debts contracted for the voyage which she is about to undertake; and even in the latter case, the attachment is dissolved, on security being given.

A ship is considered to be on the point of sailing, when she is cleared at the customhouse, and the captain is in possession of her clearance.

TITLE III.

Of Owners of Ships.

Art. 216. Every owner of a ship or vessel is civilly responsible for the acts of the master, in every thing which relates to the vessel and her voyage.

This responsibility ceases by the abandonment of the ship and her freights. (89)

Art. 217. The owners of armed vessels are not, however, answerable for acts of violence and depredations committed at sea by the armed men on board, or by their crews beyond the amount of the security which they have given, unless they have been principal parties or accomplices in the same. (90)

(88) That is to say, all creditors otherwise intitled to a lien on the property; for creditors by simple contract, whose debts are neither sanctioned by a judgment, nor evidenced by a notarial act or other matter of record, are not intitled to come in for a share of the proceeds.

(89) The same thing is provided by the ordinance of Rotterdam, and by the British statute, 7 Geo. 2. c. 15.

(90) This is contrary to the opinion of Bynkershoek, who thinks that owners of privateers ought to be indefinitely bound for the acts of those whom they employ. *Law of War*, c. 19.

ART. 218. The owner of a vessel may dismiss the master without being liable to make any indemnity, unless there be an agreement in writing to the contrary.

ART. 219. If the master so dismissed is a part owner of the vessel, he may renounce his part ownership and demand the reimbursement of the capital representing his share.

The amount of that capital is to be determined by arbitrators agreed upon by the parties, or nominated *ex officio*.

ART. 220. In every thing which concerns the joint interest of the owners, the opinion of the majority in value shall prevail.

The vessel shall not be adjudged to be sold, in order to a distribution of the proceeds between the several owners, except on the application of the majority in value of the said owners, unless there be a written agreement to the contrary.

TITLE IV.

Of the Captain or Master.

ART. 221. Every captain or master intrusted with the care and management of a ship or other vessel, is answerable even for the slight faults which he may commit while acting in that capacity.

ART. 222. He is responsible for the goods laden on board of his vessel.

He gives a receipt for the same which is called a *bill of lading*.

ART. 223. It belongs to the master to hire and engage the mariners and other persons employed under him on board of his vessel; but he must do it in concert with his owners, when in the place of their residence.

ART. 224. The master keeps a book (91) or register, paged and flourished by one of the judges of the tribunal of commerce, or by the mayor or his assistant, where there is no tribunal of commerce.

This book or register contains:

The resolutions taken during the voyage,

The receipts and expenditures of the vessel or concerning the same, and generally every thing which relates to his business and duty as master, and every thing which may be the subject of an account to be rendered, or of a demand to be made.

ART. 225. The master before taking his cargo on board, is bound to cause the vessel to be surveyed (92) in manner and form as prescribed by the regulations. (93)

(91) This book is called in French *livre de par dessus bord*, and in the Spanish language from which this denomination appears to be derived, *libro de sobordo*. It is different from the log book, which is called *journal de route*.

(92) In order to ascertain whether or not she is seaworthy, and that the lives of the men and the property of the shippers and underwriters may not be wantonly exposed.

(93) *Par les reglements*. The American reader will perhaps be at a loss to understand what are those *reglements* or regulations so often referred to in the

The *procès-verbal* of survey is deposited of record in the registry of the tribunal of commerce, and a certified copy thereof is delivered to the master.

ART. 226. The master is bound to keep on board of his vessel,
The bill of sale or other evidence of the owner's property therein,
The *acte de Francisation*, (94)
The *rôle d'équipage* or muster roll, (95)
The bills of lading and charter parties,
The *procès verbal* of survey,
The customhouse receipts for the duties, or certificates (96) that security has been duly given for the same.

ART. 227. The master is bound to be on board of his vessel when she enters or sails out of ports, harbours or rivers.

ART. 228. In case of disobedience to any thing contained in the four next preceding articles, he shall be responsible to those concerned in the vessel and her cargo, for all the consequences which may result therefrom.

ART 229. If the master load any merchandise on the deck of his vessel, without the consent of the shipper, in writing, first had and obtained, he shall be answerable for all the damage which may happen to the same.

course of this code. It is proper, therefore, to give some explanation of them. By the 44th article of the constitution of France, of November, 1799, commonly called the *Consular constitution*, it is provided: That the laws to be enacted are to be proposed in the first instance by the government to the legislative body, and that the *government* is empowered to make *the necessary regulations to insure their execution.* By virtue of this constitutional clause, Bonaparte has *accroached* to himself exclusively a considerable proportion of the legislative power. In fact, the legislature is not permitted at present to interfere but with the mere outlines of general legislation, all matters of detail are considered as properly within the sphere of the regulating power, which is the emperor himself. Thus in the present code, book iv. it is provided that there shall be in France *tribunals of commerce*, but their number and the places where they are to be established, are to be determined by the *regulations*, that is to say, by special laws made by the emperor alone, without the concurrence of the legislative body. Those regulations are of various kinds, and receive various denominations, according to the particular department which is to carry them into execution. There are regulations of *general and special police*, regulations of *general administration*, and others, which are in fact laws under another denomination. It is easy to conceive how easily by this means Bonaparte may make himself the sole legislator in France, and how he may modify and alter the existing laws at his pleasure, under color of this regulating power.

(94) This is an instrument in nature of a *register*, the object of which is to prove that the vessel is a French bottom, and intitled to sail under the French flag.

(95) We have already explained the nature and form of this instrument *antè* note 78. There is no proper denomination for it in the English language, the contract between the mariners and the master being only evidenced in Great Britain and America, by a private written agreement called *seamen's articles.* It is called in the Spanish language, *rol de tripulacion.* Among the Northern nations of Europe, where it is generally in use, it is denominated *muster roll;*—Germ. *muster rolle;*—L. Dutch, *monster roll;*—Dan. *mynster rulle;*—Swed. *mønstér rulle.*

(96) Those certificates are called *acquits à caution.*

This article is not applicable to the coasting trade.

Art. 230. Nothing can exempt the master from responsibility but the proof of inevitable accident or irresistible force. (97)

Art. 231. The master and mariners cannot be arrested for civil debts while on board of a vessel ready to put to sea; or in boats going or returning to or from such vessel, except it be for debts contracted for the voyage which she is about to perform, nor can they be arrested, even in that case, if they give security for the debt.

Art. 232. The master cannot, while in the place where his owners or their representatives reside, cause repairs to be made to the vessel, purchase sails, cordage or other articles for the same, take up money on bottomry for that purpose, or let her out to freight without their special consent first had and obtained.

Art. 233. If a vessel be let out to freight with the consent of the owners, and any of them refuse to contribute their share of the necessary expense to equip her for sea, the master may in that case, having first obtained a judge's order for that purpose, take up money on bottomry for the account of the part owners so refusing, on their share of the vessel, within four and twenty hours after summoning them to pay their quota of the expenses.

Art. 234. If in the course of a voyage it becomes necessary to repair a vessel or purchase provisions for her, the master after proving the necessity thereof by a *procès verbal* signed by the officers and principal men of the crew, may, being previously authorized thereto, if in France, by the tribunal of commerce, and in default thereof, by a justice of the peace, and in foreign countries, by the French consul, or if there be no consul, by the competent local authority, take up money on the vessel at maritime risk, or he may pawn or sell some of the merchandise to the amount required and duly proved as aforesaid.

The owners, or the master as their representative, shall account for the merchandise thus sold according to the market price of goods of the same nature and quality in the port of delivery at the time of the vessel's arrival there.

Art. 235. The master before he sets sail from a foreign port or French colony on his return to France, shall be bound to forward to his owners, or their representatives, an account signed by him of the quality and price of the goods laden on board of his vessel and of the sum of money which he has borrowed, together with the names and places of abode of the lenders.

Art. 236. If a master without necessity, take up money upon the body, provisions or equipment of his vessel, pawn or sell merchandise or provisions, or exhibit in his accounts false statements of average, or fictitious items of disbursement, he shall be responsible for the same to the owners and shippers, and personally bound to refund the moneys and pay the value of the merchandise,

(97) *Obstacles de force majeure.*

and shall moreover be liable to a criminal prosecution, if there be cause for it.

Art. 237. The master cannot sell the vessel without a special power from the owners, on pain of the sale being declared null and void, except only in case it should be legally proved that she was not seaworthy.

Art. 238. The master of a vessel hired for a voyage, is bound to perform it, on pain of being obliged to indemnify the owners and affreighters for all losses, damages and expenses, which may result from his refusal or neglect.

Art. 239. The master of a vessel who sails as a part owner (98) cannot carry on any traffic or commercial dealing for his separate account, unless there be an agreement to the contrary.

Art. 240. In case of an infringement of the prohibition contained in the next preceding article, the merchandise shipped by the master for his separate account, shall be forfeited to the other part owners.

Art. 241. The master cannot abandon his vessel during the voyage, however great the danger may be, without the advice of the officers and principal mariners; and in that case, he is bound to carry off with him the money and most valuable merchandise that he has on board, and which may be removed, under pain of being personally answerable for the same.

If the money or goods so taken out of the vessel are lost by any accident, the master is no longer responsible for the same.

Art. 242. The master of a vessel is bound, within four and twenty hours after his arrival, to cause his book or register to be examined and certified by the proper magistrate, and to make his report (99) in due form.

The report must specify:
The time and place of his departure,
The course of his navigation,
The dangers which he has encountered,
The disturbances which may have happened on board of the vessel, and all the remarkable circumstances of his voyage.

(98) *A profit commun.* This is particularly applicable to fishing and whaling voyages, which are generally undertaken in partnership between the owners and master, and even the mariners. Navigation in ancient times was carried on almost entirely in that manner, as sufficiently appears from the *Consolato del Mare.* The same custom still prevails at this day in the Ottoman dominions, where both vessel and cargo are the joint property of the owner, master and mariners. It often happens that when a parcel of goods is sold out of a Greek vessel, the crew are called together to give their advice and consent to the terms of the contract.

(99) This is the same thing in substance as what with us is called a *sea protest,* with this difference, that in France as well as in Spain and in some other countries, it is made in the more solemn form of a report of the master to some judicial authority, confirmed by the examination upon oath, of the officers and part of the crew. In England it is simply made in the form of a voluntary affidavit of the master, and some of the mariners, before a notary public or justice of the peace, and is no evidence whatever in trials at law.

Art. 243. The report is made at the registry before the president of the tribunal of commerce.

In places where there is no tribunal of commerce, the report is made before the justice of the peace of the district.

The justice of the peace before whom the report is made, is bound to forward it, without loss of time, to the president of the nearest tribunal of commerce.

In both cases, the report is deposited of record in the registry of the tribunal of commerce.

Art. 244. If the vessel puts into a foreign port, the master is bound to appear personally before the consul of France, to make his report to him and take from him a certificate, stating the dates of his arrival and departure, and the nature and condition of his cargo.

Art. 245. If in the course of the voyage, the master of a vessel is compelled to put into a French port, he is bound to declare to the president of the tribunal of commerce of the same port, the reasons which obliged him to put in there.

In places where there is no tribunal of commerce, the declaration is to be made to the justice of the peace of the district.

If the vessel be forced to put into a foreign port, such declaration is to be made to the consul of France, and if there be no consul to a magistrate of the place.

Art. 246. The master of a vessel who in consequence of shipwreck or other cause, has escaped alone or with part of his crew, is bound to appear before the judge of the place, and if there be no judge, before any other civil authority, there to make his report and prove the same by those of his crew who have escaped with him, and to take a certified copy thereof.

Art. 247. In order to prove the facts stated in the captain's report, the judge takes the depositions of the crew, and if possible of the passengers, and when necessary collects such other evidence as the case may require.

Reports not thus proved are not admitted in evidence in favour of the master, and are not available in courts of justice, except the master should have escaped alone to the place where the report is made.

Such reports are only admitted as *primâ facie* evidence, and may be rebutted by contrary proof.

Art. 248. Except in cases of imminent danger the master cannot unlade any merchandise (100) before he has made his report, on pain of being prosecuted criminally.

Art. 249 If provisions fail during the voyage, the master may, with the advice of the officers and principal mariners, compel those who have a private stock of provisions to deliver up the same for the use of all on board. He will be bound however to pay to them the value thereof.

(100) Because if he reports that the cargo has suffered damage, a survey thereof immediately takes place, by which it is ascertained whether the damage has been occasioned by the perils of the sea, or by bad stowage or other fault of the master, who in that case is responsible.

TITLE V.

Of the Hiring and Wages of Seamen.

ART. 250. The terms and conditions of the engagement of the master and crew of a vessel, are evidenced by the *rôle d'équipage*, or by articles of agreement (101) made between the parties.

ART. 251. The master and mariners cannot under any pretence, ship merchandise on board of the vessel for their own private account, without leave of the owners and paying freight therefor, unless they are thereto authorized by the terms of their contract.

ART. 252. If before the sailing of the ship, the voyage be broken up by the act of the owners, master or affreighters, the seamen hired for the voyage or by the month, are to be paid for the time during which they have been employed in rigging and fitting out the vessel. They retain as an indemnity, the earnest-money which they have received.

If they have not received any money in advance, they are intitled by way of indemnity to one month's wages at the rate mentioned in the agreement.

If the voyage be broken up after it is begun, the seamen hired for the voyage are to be paid the whole of their stipulated wages.

Seamen hired by the month, receive their wages for the time that they have been employed on board of the vessel, and further by way of indemnity, one half of their wages for the presumed duration of the remainder of the voyage for which they were hired.

Seamen hired for the voyage or by the month, receive moreover, a sum (102) of money sufficient to enable them to return to the place from whence the vessel sailed, unless the master, owners or affreighters will procure them a passage on board of another vessel sailing for the same place.

ART. 253. If trade be prohibited with the place to which the vessel is bound, or if she be embargoed or detained by order of the government before the voyage has begun:

The seamen shall only be paid for the time that they have been employed in the fitting out of the vessel.

ART. 254. If the prohibition of trade or detention of the vessel take place during the course of the voyage;

(101) Articles of agreement at present are seldom made except between the owners and master, or when there are particular conventions between the master and some of the officers. For as to the mariners and officers generally, the *rôle d'équipage* supersedes the necessity of any other writing, and is itself conclusive evidence of what it contains, so that no proof whatever can be admitted to the contrary. 1 *Valin's Com.* 677.

(102) This sum of money is called in French *conduite*, and is calculated at so much per league, according to the length of the voyage to be performed. Before the revolution, the law had fixed it at three sols per league for the officers of the ship, and two sols for the mariners. Afterwards it was increased to three sols per league for mere apprentices, and proportionally for officers and mariners. 1 *Valin* 706. What sums have been fixed by the modern *regulations*, we do not know.

In the case of prohibition of trade, the seamen are paid in proportion to the time of their actual service.

If the vessel be detained, they are intitled, if hired by the month, to one half of their wages during the detention.

Seamen hired for the voyage, receive the full wages stipulated by their agreement.

Art. 255. If the voyage be prolonged, the pay of the seamen hired for the voyage is proportionally increased.

Art. 256. If the vessel be unladen voluntarily at a nearer port than that mentioned in the charter-party, no deduction shall be made from their wages on that account.

Art. 257. If the hire of the seamen be a share of the profits or freight, and the voyage be broken up, delayed or prolonged, by some accident or circumstance of irresistible force, no indemnity, nor increase of wages is due to them in consequence thereof.

But if the breaking up, delay or prolongation of the voyage is occasioned by the fault of the shippers or affreighters, they shall be intitled to a share of the demurrage or other indemnity which shall be adjudged to the vessel or her owners.

Such demurrage or indemnity shall be distributed among the owners of the vessel and the master, officers and crew in the same proportion as the freight should have been.

If the delay be occasioned by the fault of the master or owners, they shall be bound to indemnify the mariners therefor.

Art. 258. If the ship be captured, stranded or wrecked, and ship and goods be entirely lost, the mariners are not entitled to any wages.

They are not obliged to refund the advances which they have received.

Art. 259. If some part of the vessel be saved from the wreck, the seamen hired for the voyage, or by the month, are paid the wages due to them, out of the materials saved.

But if the materials be not sufficient, or if merchandise only has been saved, they shall be paid out of the freight which shall be considered as an auxiliary fund for the purpose. (103)

Art. 260. Seamen whose hire is a share of the freight, are paid their wages only out of the freight in proportion to the master's share.

Art. 261. Whatever be the terms or conditions on which seamen have been hired, they are to be paid for their time and labour, expended in saving parts of the vessel, or goods from shipwreck.

Art. 262. If a seaman be wounded in the service of the ship, or fall sick during the voyage, his wages are to be paid to him, and he is to be cured at the ship's expense.

Art. 263. If a seaman be wounded in fighting against enemies

(103) That is to say, that they are to be paid in the first instance out of the materials saved, and if those be not sufficient, then, and then only out of the freight.

or pirates, he is to be cured at the expense of the vessel and cargo.

Art. 264. If a seaman go on shore without leave, and be there wounded, he is to be cured at his own expense. He may in such case be even dismissed by the master, and he shall only receive the wages which he has actually earned.

Art. 265. The heirs of a seaman hired by the month, who dies during the voyage, shall be paid his wages to the day of his death. (104)

If he is hired for the voyage, he shall be paid one half of his wages, if he dies outward bound, or at an intermediate port; and the whole, if he dies on the way home.

If a seaman be hired for a share of the profits or freights, his whole share is due to his heirs, if he dies after the voyage began.

The wages of a seaman killed in the defence of the ship, shall be paid in full in the same manner as if he had performed the whole voyage, provided the ship arrives safe in port.

Art. 266. Seamen who are captured on board of the ship, and carried into slavery, have no claim upon the master, owner or shippers for their ransom.

Their wages are paid to them up to the day of their capture.

Art. 267. If a seaman be sent out to sea or on shore, for the service of the vessel, and be there captured and carried into slavery, he shall be paid the whole of his wages.

He shall be intitled to an indemnity for his ransom if the vessel arrive safe in port.

Art. 268. That indemnity is due by the owners of the ship, if the seaman be sent out to sea or on shore for the service of the vessel.

And by the owners and shippers if he be sent out for the service of the vessel and cargo.

Art. 269. The amount of the indemnity is fixed at six hundred francs.

It shall be collected and applied in the form and manner which shall be determined by the government, in a special *regulation* concerning the redemption of captives.

Art. 270. Every seaman who can prove that he was dismissed without a just cause, is intitled to an indemnity from the captain or master.

That indemnity is fixed at one third part of the seaman's wages, if he was dismissed before the voyage began.

It is fixed at the whole amount of his wages, and the money necessary to enable him to return to the place of his departure, if he was dismissed in the course of the voyage.

(104) The same rule is prescribed by the *Consolato del Mare*, the most ancient maritime code extant. If the mariner is hired by the month, his wages are only paid to his heirs for the time of his actual service. *Se il marinaro è accordato à mesi, e morirà, sia pagato e dato alli suoi heredi per quello che havesse servito.* Consol. del Mar. cap. 127. In M. Boucher's French translation of that code, it is chap. 130. § 321. vol. 2. p. 195.

The master cannot, in any of the foregoing cases, claim or demand of the owners, the reimbursement of the amount of that indemnity.

No indemnity is due if the seaman be dismissed before the closing of the *rôle d'équipage*.

The master cannot in any case dismiss a seaman in a foreign country.

ART. 271. The ship and freight are specially bound for the seamen's wages.

ART. 272. All the above rules concerning the wages, curing and redemption of seamen, are applicable to the officers and all others belonging to the vessel.

TITLE VI.

Of Charter Parties of Affreightment.

ART. 273. Every contract for hiring or letting out a vessel, called a *charter-party* of *affreightment*, must be in writing.

It specifies:

The name and tonnage of the vessel,
The name of the captain or master,
The names of the freighter and affreighter,
The time and place of lading and unlading,
The amount of the stipulated freight,
Whether the whole or part of the vessel is freighted,
The indemnity agreed upon by the parties for demurrage.

ART. 274. If the time of the lading and unlading of the vessel be not fixed by the charter-party, it shall be regulated according to the custom of the place.

ART. 275. If a vessel be hired by the month, and there be no agreement to the contrary, the freight shall be paid from the day that the vessel set sail.

ART. 276. If before the departure of the vessel an embargo be laid, or trade be prohibited with the country to which she is bound, the charter-party shall be annulled, without any indemnity to either party.

The shipper shall pay the charges of lading and unlading his merchandise.

ART. 277. If the detention of the vessel in port by superior force or authority, be only for a limited time, the charter-party remains in force, and no indemnity shall be paid by either party to the other, on account of the delay.

The charter-party remains equally in force if such detention take place during the voyage, and the amount of the freight shall not be thereby increased.

ART. 278. The shippers may, during the detention of the vessel, unlade their goods at their own charge, on condition that they will reship them or indemnify the master.

ART. 279. If the port to which the vessel is destined be blockaded, the master is bound, if he has not received orders to the con-

trary, to go into a neighbouring port of the same power, which it may be lawful for him to enter.

Art. 280. The ship, her rigging, apparel and freights, and the goods on board are respectively bound for the execution of the covenants and agreements contained in a charter-party. (105)

TITLE VII.

Of the Bill of Lading.

Art. 281. A bill of lading must express the nature and quantity as well as the species and quality of the articles shipped.

It contains:

The name of the shipper,
The name and address of the consignee,
The name and place of abode of the captain or master,
The name and tonnage of the vessel,
The place of departure and the port of destination.

It states:

The amount of the freight,
It exhibits in the margin the marks and numbers of the articles shipped.

A bill of lading may be made to order, or to bearer, or state that the goods are deliverable to a particular person therein named.

Art. 282. There are four originals or counterparts of each bill of lading.

One for the shipper,
One for the consignee,
One for the master,
And one for the owner of the ship or vessel.

Those four originals are signed by the shippers and by the master, within twenty-four hours after the delivery of the merchandise on board.

The shipper is bound within the same time to give receipts to the master for the merchandise shipped.

Art. 283. A bill of lading made in the above prescribed form, is legal evidence between all the parties concerned in the shipment and between them and the insurers.

Art. 284. In case of variance between the different counterparts of the same bill of lading, credit shall be given to that remaining in the hands of the captain, if it be filled up in the handwriting of the shipper or of his agent, and the counterpart exhibited by the shipper or consignee, shall be preferred if it is filled up by the captain.

Art. 285. Every factor, agent or consignee who shall have received the merchandise mentioned in the bills of lading or charter-party, shall be bound to give a receipt therefor to the master

(105) A clause to this effect is always inserted in English and American charter-parties, but since the courts of admiralty in England have been prohibited the exercise of their ancient jurisdiction in cases of charter-party and freight, there is no legal mode of inforcing it.

on demand, on pain of being adjudged to pay him all the expenses which he may have incurred on that account, together with interest and damages, even for delay.

TITLE VIII.

Of Freight.

ART. 286. The consideration paid or stipulated for the hire of a ship or other vessel is called *freight*.

It is fixed by the agreement of the parties.

It is evidenced by the charter-party or by the bill of lading.

Ships are freighted in whole or in part, for an entire voyage or for a limited time, by the ton, by the quintal, *by the whole cargo or shipment*, (106) *or by separate shipments in the way of general or freight ships*, (107) the burthen of the vessel being expressed and made known. (108)

ART. 287. If the entire ship is let out to freight, and the affreighter does not ship a sufficient quantity of merchandise to complete her cargo, the master may take other goods on board without the consent of the affreighter.

The affreighter has the benefit of the freight of the merchandise shipped to complete the cargo of a vessel, which he has taken entirely to freight.

ART. 288. The affreighter who has not shipped the quantity of merchandise mentioned in the charter-party, is bound to pay the entire freight for the whole cargo which he had engaged to put on board.

If he ships more, he pays freight for the overplus according to the terms of the charter-party.

If the affreighter, however, not having shipped any thing, breaks up the voyage before the vessel's departure, he shall pay to the master, by way of indemnity, one half of the freight stipulated by the charter-party for the whole of the shipment that he was bound to make.

(106) The expression in the French is *à forfait*, which means in vulgar language *out and out*, or *in the lump*.

(107) This is also expressed in the original by two short words, *à cueillette*. The term is derived from the Latin *colligere*, and means that the master *collects* his freights from different shippers. We have no corresponding expression in English, but we call a vessel employed in that manner, in common parlance, a *freight ship*, and in law, a *general ship*.

(108) The ordinance of Louis XIV, of 1681, made it optional with the owner or master to declare or not, the burthen of his ship in the charter-party, which was allowed to be made *avec désignation ou sans désignation de portée*. Ord. de la Mar. l. 3. tit. 3. art. 1. But in this, as well as in many other, and some of them much more striking instances, the ruler of France seems to lay the mercantile profession under a kind of military or monkish discipline. Nor are all the restrictions under which they are laid, or the vexatious and troublesome obligations imposed upon that respectable body of men, to be found in this work; but they must be looked for in the executive *réglements*, which the government is authorized to make, and which are best calculated to show what the law is *in practice*.

If the vessel having received a part of her cargo on board, sails without her full lading, the master shall be intitled to the whole freight.

Art. 289. The master who has represented his ship as of a greater burthen than it really is, is bound to the affreighter in damages.

Art. 290. No misrepresentation is held to exist in the statement of the tonnage of a vessel, if the error does not exceed one fortieth part, or if the statement is conformable to the certificate of measurement.

Art. 291. If the vessel be a general ship, laden by several shippers, whether by the ton, quintal or shipment, the shipper may take away his merchandise before the sailing of the vessel, on paying half the freight.

He shall be at the expense of the lading of his own merchandise, as well as of the unlading and relading of such other goods as it will be necessary to displace, and he shall also pay the demurrage that may be thereby occasioned.

Art. 292. The master may put on shore, in the port where he is lading, the merchandise found on board of his vessel, and which has not been declared to him, or charge freight for the same, at the highest price paid at the same place for merchandise of the same kind.

Art. 293. The shipper who takes back his merchandise during the voyage, is bound to pay the entire freight, and all the expenses incurred for the displacing and replacing of the same; but if the taking away of the merchandise is occasioned by some act or fault of the master, he shall be answerable for all the expenses.

Art. 294. If the vessel be detained prior to her departure, or in the course of the voyage, or at the port of discharge, by the act of the affreighter, he shall bear all the expenses occasioned by such detention.

If the ship, having been freighted on a voyage out and home, return entirely without cargo, or with an incomplete one, the master is intitled to the whole freight, and also to demurrage.

Art. 295. The master is answerable to the affreighter in damages, if by his fault or means the ship has been detained or her departure delayed during the course of the voyage, or at the port of discharge.

The amount of the damages is to be settled by referees. (109)

Art. 296. If the master is obliged to repair his ship during the voyage, the affreighter is bound to wait, or pay the entire freight.

If the vessel cannot be repaired, the master is bound to hire another.

(109) *Par experts*, that is to say, by persons skilled in the particular branch of business on which the controversy turns. They are in fact referees, and make their report to the court who appoints them.

If the master has not been able to hire another vessel, the freight is only due in proportion to the voyage performed (110)

Art. 297. The master loses his freight, and is answerable in damages to the affreighter, if the latter prove that the vessel was not sea-worthy at the time of her sailing.

The certificate of survey made at the time of departure may be rebutted by contrary evidence.

Art. 298. Freight is due for the merchandise which the master has been obliged to sell for provisions, repairs and other necessaries for the ship, he accounting for the same at the price that the remainder, or other like merchandise of the same quality shall have been sold at the port of discharge, if the ship arrive there in safety.

If the ship is lost, the master shall account for the goods at the price for which he sold them, and shall likewise retain the freight mentioned in the bills of lading.

Art. 299. If the port to which the vessel is bound, be prohibited, so that the master is obliged to return home with his cargo, he is only intitled to freight for the outward voyage, though the ship had been freighted out and home. (111)

Art. 300. If the vessel be arrested or detained in the course of her voyage by the authority of a sovereign power, no freight is due for the time of her detention, if she be hired by the month, nor any augmentation of freight, if she is chartered for the voyage.

The wages and maintenance of the crew during the ship's detention are reputed average.

Art. 301. The master is intitled to the freight of merchandise thrown overboard for the common safety, but such freight must be brought into contribution.

Art. 302. No freight is due for merchandise lost by shipwreck or stranding, plundered by pirates, or captured by enemies.

The master is bound in such cases to refund the freight which may have been advanced to him, if there be no agreement to the contrary.

Art. 303. If the vessel and goods be ransomed, or if the merchandise be saved from shipwreck, the master is intitled to his freight to the place where the capture or shipwreck took place.

He is intitled to his whole freight, subject to contribution, if he carry the merchandise to the place of its destination.

Art. 304. The contribution is made on the value of the merchandise at the market price in the port of delivery, deducting the costs and charges, and on one half of the ship and freight.

(110) *A proportion du voyage avancé*, that is to say, not in proportion to the physical distance which the vessel may have sailed over, as for instance, if she was driven out of her course by contrary winds, but in proportion as she has advanced towards the port of delivery. This is also, we presume, what is to be understood by the phrase of the civilians, adopted by the common lawyers, *pro ratâ itineris peracti.*

(111) The same rule was prescribed by the ordinance of 1681, *hoc titulo* art. 15.

Mariners' wages are not brought into contribution.

ART. 305. If the consignee refuse to receive the merchandise, the master may cause the same to be sold by judicial authority, for the payment of his freight, and the overplus to be deposited for the account of whom it may concern.

If the proceeds be not sufficient, he retains his remedy against the shipper.

ART. 306. The captain cannot retain the merchandise on board of the ship to answer for his freight.

He may, at the time of unlading, demand that the same be deposited in the hands of a third person, until his freight be paid.

ART. 307. The master has a lien and right of priority for his freight on the merchandise laden on board of his ship, for fifteen days after the delivery thereof, (112) if they have not passed into the hands of third persons.

ART. 308. In case of the failure or bankruptcy of the shippers or owners of the goods, before the expiration of the fifteen days, the master has a prior lien to all other creditors for the payment of his freight and average.

ART. 309 The shipper can in no case demand a diminution of the amount of freight.

ART. 310. The shipper cannot abandon for the freight and merchandise that has suffered a diminution in value or price, either by accident or by its own defect.

If, however, casks containing wine, oil, honey or other liquid substances, have leaked so much as to be entirely or almost empty, such may be abandoned for the freight.

TITLE IX.

Of Maritime Loan. (113)

ART. 311. The contract of maritime loan is made in notarial form, or under private signatures.

It specifies:

(112) He may enforce that lien by seizing the goods in judicial form, that is to say, by means of an officer of justice, as explained above, note (82), even while carrying in lighters from his ship to the shore. Ord. 1681. h. t. art. 23. But he cannot retain of his own private authority, because, says *Valin*, no one ought to be allowed to take the law into his own hands, and lest it might occasion personal quarrels between the parties, *ne partes veniant ad arma.* 1 Val. Com. 665.

(113) The *fœnus nauticum* of the civil law, which in the French law is called *contrat de prêt à grosse avanture*, and by abbreviation *contrat de grosse* or *contrat à la grosse*, includes the several contracts which with us are denominated *bottomry and respondentia*, with all the modifications of which they are susceptible. Such a generic term is wanted in the English technical language, and without it, it is difficult to translate with proper accuracy and without awkward circumlocutions, the writings of the civilians upon this subject.—We are pleased to find that Mr. *Joseph Ingersoll*, in his translation of *Roccus de navibus*, and afterwards Mr. *Hall*, in his translation of Emerigon's *Traité des contrats à la grosse*, and of the titles of the Digest and Code *de Nautico fœnore*, have adopted the terms *maritime loan, maritime money* (*pecunia trajectitia*) *and lending and borrowing at maritime risk*. These terms have the advantage of being derived entirely from our own

The principal sum lent, and the sum stipulated for maritime profit, (114)
The property bound or hypothecated for the eventual security of the loan,
The names of the ship and of the master,
Those of the lender and borrower,
Whether the loan is made for an entire voyage,
For what voyage or space of time,
The term or period of repayment.

ART. 312. Every person who lends money, in France, at maritime risk, is bound to cause the contract to be recorded in the registry of the tribunal of commerce, within ten days after its date, on pain of forfeiting his lien and privilege.

If the contract be made in a foreign country, it is subject to the formalities prescribed by art. 234.

ART. 313. If in a contract of maritime loan, the money be stipulated payable to order, the bill or instrument may be negotiated and transferred by indorsement.

In such case, the indorsement thereof has the same legal effect, and intitles the party to the same actions and remedies as the indorsement of a bill of exchange, or other negotiable paper.

ART. 314. The indorser is not responsible for the payment of maritime premium or interest, unless the contrary be expressly stipulated. (115)

language, and of being perfectly consonant to its analogy. They are, moreover, easily understood, and convey to the legal mind clear and precise ideas of the subjects which they are meant to describe. We do not therefore hesitate to make use of them in this translation. By their means we are enabled to preserve the language as well as the spirit of our text, and to exhibit the *fœnus nauticum* with its genuine features, undisguised by the phraseology of another code. We have not, however, entirely discarded the terms *bottomry and respondentia*, but make use of them occasionally in the course of this work when strictly and properly applicable.

(114) The consideration paid in addition to the principal for money borrowed at maritime risk. It receives in the French law various denominations, according to the form which it assumes, or the manner in which it is stipulated to be paid. Sometimes, it is a monthly or other periodical per centage on the capital sum, and then it is called *interest*, however much it may exceed the legal rate established for ordinary contracts; or it is a gross sum to be paid at the end of the voyage, and then it is called *premium*, and if to be paid at an intermediate port, it is denominated *exchange*. The term *maritime profit* includes all these various modes under one general denomination. *Emerig. on Marit. Loans*, Hall's Transl. p. 56. in not.

(115) The reason of this rule of law is evident. The premium stipulated to be paid on a bottomry or respondentia contract is not payable at all events, and therefore *primâ facie* is not negotiable, and if nothing appears to the contrary on the face of the indorsement, shall not be presumed to be included in the transfer of the bill, or consequent guaranty of the indorser. But if the parties agree otherwise, there is nothing in law or reason to prevent their agreement having its full effect. For, the bill of bottomry being indorsed by the lender in favour of a third person, becomes in fact, in the same manner as the indorsement of a promissory note, (2 *Bur.* 676), a bill of exchange drawn by him to the indorser's order on the borrower for the sum therein expressed. And that sum may as well represent the aggregate of the principal and premium, as the principal only. But in that case,

ART. 315. Maritime loans may be secured by hypothecation, on
The body of the ship,
Her rigging, tackle and apparel,
Her outfits and provisions,
Her cargo,
Or on the whole of these together, or any part or parts thereof.

ART. 316. Maritime loans exceeding the value of the property pledged, may be declared null and void, if any fraud shall appear on the part of the borrower.

ART. 317. If there is no fraud, the contract is maintained in force to the extent only of the value of the property pledged, after valuation thereof made, or agreed upon between the parties.

The surplus of the money borrowed is to be repaid with legal interest.

ART. 318. All loans upon the freight of a voyage to be performed and upon the expected profits of merchandise, are prohibited.

In such case, the principal only without interest is to be repaid to the lender.

ART. 319. It is not lawful to lend money to seamen or mariners at maritime risk upon their wages.

ART. 320. The vessel, her rigging, apparel, outfits, provisions, and even the freight already earned, are bound with privilege for the payment of the principal and interest of moneys taken up at maritime risk, upon the body of the vessel.

The cargo is bound in like manner for the payment of the principal and interest of moneys taken up at maritime risk thereon.

If money has been borrowed on a particular part or proportion of the vessel or cargo, that part or portion alone is bound by privilege.

ART. 321. If the master take up money at maritime risk in the place where the owners of the ship reside, without their authorization in authentic form, or their consent evidenced by their being parties to the contract, he thereby gives no lien, privilege or right of action, except against himself, and his own share or interest (if any he has) in the vessel and her freight.

ART. 322. The shares of those owners, however, who have not furnished their quotas for the fitting out of the vessel within (116) twenty-four hours after being thereto legally required, are bound for the moneys borrowed for repairs and provisions, even in the place of their residence.

ART. 323. The moneys borrowed for the ship's last voyage, are repaid in preference to those lent for a former voyage, even though

the indorsee is understood not to take upon himself the risk to which the indorser is liable, but, as between them, the sum mentioned in the indorsement is payable at all events, in case of failure of the borrower, from whatever cause.

(116) That is to say, by a formal demand with protestation, made by a notary public or *huissier*.

the same be declared to be lent by way of continuation and renewal. (117)

The moneys lent in the course of the voyage, are paid in preference to the sums borrowed before the ship's departure, and if several sums have been borrowed during the same voyage, the last loan is always preferred to the former ones. (118)

ART. 324. The lender at maritime risk on merchandise shipped on board of a vessel designated in the contract, does not bear the loss of the merchandise, even though occasioned by the perils of the sea, if the said merchandise was shipped on board of another vessel, unless it be legally proved that such shipment was necessitated by inevitable accident or irresistible force.

ART. 325. If the property on which money was lent at maritime risk, be entirely lost, and if the loss happened by fortuitous accident, at the time and place of the stipulated risk, the money lent can never be demanded.

ART. 326. The waste, diminution and loss happening in consequence of the internal defect of the merchandise, and the damage occasioned by the fault of the borrower are not borne by the lender.

ART. 327. In case of shipwreck, the payment of the moneys lent at maritime risk is reduced to the amount of the value of the property saved and hypothecated for the performance of the contract, the expenses of salvage being deducted.

ART. 328. If the time of the risk is not determined by the contract, it begins, as to the ship, her rigging, tackle, apparel and provisions, from the day of her sailing, and continues until she is anchored or moored at the port or place of her destination.

And as to the goods, from the moment that they are laden on board of the vessel or in lighters to be carried thither until they are delivered on shore.

ART. 329. He who takes up money upon goods at maritime risk, is not discharged by the loss of ship and cargo, unless he prove that he had merchandise on board for his own account, to the amount of the sum borrowed.

ART. 330. Lenders at maritime risk shall contribute to general average in discharge of the borrowers.

Simple average is also at the charge of the lenders, unless there be an agreement to the contrary.

ART. 331. If there be a maritime hypothecation, and an insurance on the same ship or cargo, the proceeds of the property saved, in case of shipwreck, shall be divided between the lender at mari-

(117) If a bill of bottomry be given to enable a vessel to proceed on a particular voyage, and is not paid at the ship's return, but is left in the hands of the master, who gives a new hypothecation for it, payable at the return of the ship from the next voyage, so that it is in fact a *continuation* or *renewal* of the former loan, such hypothecation, though it were posterior in date, shall be postponed to a new loan made to enable the vessel to proceed on her last voyage. See Emerig. chap. xii. sect. 4.

(118) *Hujus enim pecunia salvum fecit totius pignoris causam.* Digest L. 20. tit. 4. l. 6.

time risk, and the insurer in proportion to their respective interests, the former coming in for his principal only, and the latter for the amount insured, without prejudice to the lien and privilege secured to them respectively, by art. 191.

TITLE X.

Of Insurance.

SECTION I.

Of the Policy of Insurance, its Form and Object.

ART. 132. The policy of insurance is made in writing.

It bears date of the day on which it is signed.

The date mentions whether it is signed before or after noon. (119)

It may be made under private signatures.

It cannot contain any blanks.

It expresses:

The name and place of abode of the insured, and whether he acts as owner or in the capacity of agent, (120)

The name and description of the vessel,

The name of the captain or master,

The place where the merchandise was or is to be shipped,

The port from which the vessel was or is to sail,

The ports or harbours where she is to load or unload,

Those at which she is to touch or trade,

The nature and value or estimate of the merchandise, or other subject matter of the insurance, (121)

The time when the risk is to begin and end, (122)

The sum insured,

(119) This is in order to ascertain, as far as possible the precise time of subscribing the respective policies, in case of double or over insurance, which by the French law annuls the latter policies so far as they exceed the insurable interest which remained in the insured at the time of the subscription thereof. See *post.*, art. 359.

(120) The same rule is established in England, under the statute 25 Geo. 3. c. 44. and the construction which it has received. Marsh. 307.

(121) *Marchandises ou objets que l'on fait assurer.* The last word *objets* includes every thing which may be the subject matter of insurance. Hence when a *bottomry* interest, for instance, is insured upon, the *nature* of it must be mentioned in the policy. 1 Emerig. 297. Such is also the law in England and America. *Glover* v. *Black*, 3 Bur. 1394.

(122) The particular risks which the underwriters take upon themselves, are not, it seems, necessary to be inserted in the policy, because the law has itself declared what they are to be. See *post.* art. 350. There is nothing, however, to prevent the parties from excepting or adding particular risks, which may be legally done under the last paragraph of this article, which directs the insertion of *all other clauses and conditions agreed upon between the parties.* And we have already observed above, note (9), that any thing may be stipulated in a French contract which is not contrary to the rules of morality, or to some express prohibition of the law.

The premium,
The submission of the parties to arbitrators in case of dispute, if the same has been agreed upon,
And generally, all other clauses and conditions stipulated between the parties.

ART. 333. The same policy may contain several insurances varying with respect to the property insured, the premium, or the several underwriters.

ART. 334. Insurance may be made, upon
The body of the vessel, laden or empty,
Her rigging and apparel,
The outfits,
The provisions,
Money lent out at maritime risk,
The cargo and all other articles that are susceptible of valuation in money, (123) and are liable to the perils of the sea.

ART. 335. Insurance may be made on the whole or part of any of the above objects, jointly or severally.

It may be made in time of war or in time of peace; before or during the voyage.

It may be made for the outward or homeward voyage, for the whole voyage or for a limited time, and also for all voyages and transportations by sea or inland navigation.

ART. 336. In case of fraud in the valuation of the property insured or of concealment or false representation, the insurer may proceed to another estimate of the same property without prejudice to his other remedies, or to a criminal prosecution, if the case require it.

ART. 337. Merchandise shipped for Europe in the ports of the Levant, on the coast of Africa or in other parts of the world, may be insured upon any ship whatever, without designation of the vessel or master.

The goods themselves may in that case be insured without being particularly described.

But the name of the person to whom such goods are directed or consigned must be mentioned in the policy of insurance, unless there be a clause therein to the contrary.

(123) It is a well known principle of the civil law, that the person of a free man is invaluable, and therefore is not susceptible of estimation. *Corporum liberorum æstimatio nulla fieri potest.* Dig. l. 14. tit. 2. l. 1. § 2. The French law has extended this principle so far, as to prohibit altogether insurances upon lives. *Ord. de la Mar.* l. 3. tit. 6. art. 10. But it permits at the same time insuring the liberty of a free man against the risk of slavery, in case of capture by Algerines or others, and the valuation is founded in that case on the probable amount of his ransom. *Ibid.* art. 9. On the other hand, the African slave trade having been restored in France to its pristine legality, the lives of negro slaves have become thereby a proper object of insurance. In order to make the law applicable to these various cases, the legislator has employed the general descriptive words, *all articles that are susceptible of valuation in money.* Such is the explanation given by the French counsellors of state in their address to the legislative body on the subject of this part of the commercial code.

Art. 338. Every article, the value of which is stated in the policy in foreign money or coins, is estimated in French money, at the current exchange, at the time of underwriting the policy.

Art. 339. If the value of the merchandise be not expressed in the policy it may be proved by the invoices and books of the insured; and in default of such proof, it is estimated at the current market price at the time and place of shipment, including all duties and charges until delivered on board.

Art. 340. If insurance be made upon returns from a country where trade is carried on by barter, and the merchandise be not valued in the policy, it shall be estimated at the value of the goods given for it in exchange, including the charges of transportation.

Art. 341. If the policy does not fix the time when the risk is to begin and end, it shall be fixed as is provided by art. 328, for contracts of maritime loan.

Art. 342. The insurer may cause the property which he has insured to be re-insured by other persons. (124)

The insured may cause the premium of insurance to be insured.

The premium of re-insurance may be more or less than that of the insurance.

Art. 343. The increase of premium stipulated in time of peace with a view to future war, the amount or proportion of which is not determined by the policy of insurance, shall be regulated by the tribunals, taking into consideration the risk, circumstances and stipulations of each policy.

Art. 344. If merchandise shipped and insured for the master's own account on board of the vessel under his command, be lost, the said master is bound to prove to the insurers that he had purchased the said merchandise, and to produce a bill of lading of the same, signed by two officers of the ship or mariners highest in grade.

Art. 345. All mariners and passengers who shall bring goods from foreign countries, on which they have caused insurance to be made in France, shall be bound to leave a bill of lading thereof in the hands of the consul of France, at the place of shipment, and if there be no consul, in those of an eminent French merchant, or of a magistrate of the place.

Art. 346. If the insurer becomes insolvent while the risk continues, the insured may demand security or that the policy be annulled.

The insurer has the same right against the insured if the latter become insolvent. (125)

Art. 347. A policy of insurance is null and void if made upon

The freight of merchandise still on board of the vessel.

(124) Such re-insurances are prohibited in England by statut. 19 G. 2. c. 37, § 4. unless the insurer be insolvent, become bankrupt or die, in either of which cases such insurer, his executors, administrators or assigns may make re-insurance to the amount of the sum previously by him insured. But this prohibition does not extend to insurances on foreign ships or goods. Marsh. 113, 114.

(125) That is to say, provided the premium be still unpaid, for otherwise the policy remains in force for the benefit of the assignees of the insured. 1 Emerig. 84.

Expected profit upon goods,
The wages of seafaring men,
Money borrowed at maritime risk,
The maritime profits of money lent at maritime risk. (126)

ART. 348. Every concealment or false representation on the part of the insured, every variance between the policy and the bill of lading which may lessen the probability of the risk, or make a difference in the subject matter thereof, renders the policy null and void.

The insurance is void even though such concealment, false representation or variance should not have contributed to the damage or loss of the property insured.

SECTION II.

Of the Obligations of the Insurer and Insured.

ART. 349. If the voyage be broken up before the sailing of the vessel, even though it be by the act of the insured, the policy is annulled, but the insurer receives by way of indemnity one half per cent. on the sum insured.

ART. 350. All loss and damage happening to the property insured, by storm, shipwreck, stranding with partial shipwreck (127) *collision* (128) forced deviation or change of route, ship or voyage;

(126) The French law abhors wagers of every description, and does not countenance them in any shape. It is a great and important question, whether insurance on interests merely eventual are to be considered entirely in the light of wagers, and how far it may be proper or expedient in a commercial country to support or encourage them. In Great Britain and the United States, we know that the legality of such insurances have always been maintained, and that no one has complained of its being productive of any inconvenience, and we know likewise, that the doctrines of the English and American courts in this respect, are conformable to the opinion of the ancient writers on maritime law, such as *Straccha*, *Santerna*, and many others. On the other hand, there appears to be some weight in the argument of the French counsellors of state, in support of the adverse position. We shall introduce it here, in order that the reader may fully understand the reasoning on which that part of the French system of legislation is founded. "Every insurance," say they, "not having for its object a real risk, is in "fact a mere wager. The insurer bets that the vessel will arrive in safety, and "the insured that she will not. This system overturns every correct principle. "Instead of interesting every person in the safe navigation of a vessel, contrary "interests are created. The insured has every thing to gain by the loss of the "property insured. By paying a trifling premium, he intitles himself to receive "the whole amount of the insurance. It is easy to see the inconveniences of such "a system, and if examples should be cited in its favour, we would not hesitate to "answer, that it shall not certainly be in France, and in a matter of such im-"portance, that the law will encourage the rage of gambling, and the immorality "of wagers."

(127) *Echouement avec bris.* Shipwreck is either absolute or partial. It is absolute, when the ship founders at sea and totally disappears, and partial only, when, by striking against a rock, stranding or otherwise, she is so broken or injured, that the sea water finds its way into her, but so that she is not entirely submerged. 1 *Emerig.* 400. *Marshall*, 488. In the French language, absolute shipwreck is called *naufrage*, and partial shipwreck, as above defined, is called *bris.*

(128) Ships or vessels *running foul of each other.* The more elegant term *collision* has been happily introduced by Marshall, in the second edition of his ex-

by jettison, fire, capture, pillage, arrest or detention of princes, declaration of war, reprisals, and generally by any other peril or accident of the sea (129) is at the risk of the underwriters.

Art. 351. No deviation, however, change of route, ship or voyage, nor any loss or damage occasioned by the act of the insured, is to be borne by the insurer; but he is even intitled to have or retain the premium (130) if the risk has commenced.

Art. 352. The waste, diminution and loss occasioned by the internal defect of the thing insured, or by the act or fault of the owners, affreighters or shippers, is not borne by the insurer.

Art. 353. The insurer is not bound to answer for the prevarication or fault (131) of the master or mariners, commonly called *Barratry*, (132) unless there be an express agreement to the contrary.

Art. 354. The insurer is not bound for pilotage, towage, loadmanage, or any other kind of duty laid upon the ship or goods.

Art. 355. Merchandise which is perishable by its nature, or subject to leakage, diminution or waste, such as corn and salt, shall

cellent Treatise upon Insurance. We think ourselves warranted to make use of it on the strength of so respectable an authority. In French it is called *abordage*.

(129) Under the general description of *perils of the sea*, the French law includes every accident which usually happens in the course of navigation, and not merely those which are immediately occasioned by shipwreck or tempest. *Fortune de mer*, says *Emerigon*, is a *generic* term, which comprehends every thing for which insurers are responsible. 1 *Emerig.* 359. But in England, the meaning of these words is more restricted, "it having been found convenient," says Marshall, "to "distinguish the losses to which ships and goods at sea are liable, by the more *im*-"*mediate* causes to which they may be particularly ascribed." Marsh. 487.

(130) In several parts of France, it is not customary to pay the premium until after the risk is ended. 2 *Valin*, p. 44. 1 *Emerig.* 81. Although the ordinance of Louis XIV. peremptorily ordered that it should be paid at the time of signing the policy. *Ord. de la Mar.* hoc tit. art. 6. This code decides nothing upon the subject, but leaves it to be settled by usage, or the agreement of parties.

(131) In the French law, the word *barratry* comprehends "every fault of the "master and mariners, by which a loss is occasioned, whether arising from fraud, "negligence, unskilfulness, or mere imprudence." See Marsh. 518, and the authorities there cited.

(132) It was otherwise under the ordinance of Louis XIV. The insurer was *ipso jure* answerable for the barratry of the master, *Ord. de la Mar.* h. t. art. 28. It has been a point very much contested among the civilians, whether *barratry* comes or not within the general description of *perils of the sea*, or fortuitous accident. See *Rocc. de Assec.* not. 44. 89. and it has been differently settled by the laws and usages of different countries.

It may be proper, perhaps, to explain here, that in France, as well as in most of the other countries of Europe, the clause of insurance against barratry, though it may be inserted in a printed policy, is only effectual in favour of the shippers, and never of the owner of the ship who himself appoints the master, and is responsible for his faults and misconduct. See 1 *Emerig.* 368, and the authorities there cited. In England, a different principle has prevailed, and has involved the general law on the subject of barratry in a great deal of embarrassment, from which, however, the courts are gradually extricating it. The inconveniency of the English doctrine did not escape the eagle eye of lord Mansfield. "I wonder," said that great man, "that the word *barratry* should ever have crept into insurances, and still more, "that it should have continued in them so long: for the underwriter insures the "conduct of the captain (whom he does not appoint and cannot dismiss) to the "owner, who can do either." *Nutt* v. *Bourdieu*, 1 T. Rep. 132.

be specifically mentioned in the policy, otherwise the insurers shall not be answerable for the loss thereof, or for any damage that may happen thereto, unless the insured at the time of signing the policy were ignorant of the nature of the cargo.

ART. 356. If insurance be made on merchandise out and home, and the vessel having arrived at her outward port of delivery, does not take in any, or receives only a part of her return cargo, the insurer is only intitled to two proportional third parts of the stipulated premium agreed upon (133) if there be no agreement to the contrary.

ART. 357. If insurance or re-insurance be made beyond the value of the goods shipped, the contract shall be void as to the insured, if he has been guilty of fraud or deceit.

ART. 358. If there be no fraud or deceit, the policy shall be maintained in force to the extent only of the value of the property shipped, after valuation thereof, made, or agreed upon by the parties.

In case of loss, the insurers shall be bound to contribute each in proportion to the sum by him subscribed.

They shall not receive any premium for so much as is over insured, but only an indemnity of one half per cent.

ART. 359. If there be several policies of insurance made without fraud on the same shipment, and the first policy cover the whole amount of the property shipped, it alone remains in force.

The subsequent insurers are liberated, and only receive one half per cent. on the sum insured.

If the whole amount of the shipment be not covered by the first policy, the subsequent insurers are answerable for the overplus in the order of the dates of their several policies. (134)

(133) This is in the case of a *gross premium* (which the French call *prime liée*) having been stipulated for the voyage out and home. For if the risks and premiums have been divided, this article can have no application. If the insurance is made for a gross premium out and home, and no return cargo is put on board, the insurer is only intitled to two thirds of the stipulated premium. If partial returns have been made, then he receives the whole premium on the amount of the return cargo, and two thirds only of so much as is deficient, to make it equal to the whole amount of the outward cargo. This is, we think, what the code means to express by the words *two proportional third parts.*

(134) The rule here prescribed by this Code is universally admitted on the continent of Europe, and formerly obtained in England. It was once stated on the trial of a cause, to be the mercantile custom of the realm, and to have been so proved *by all the exchange*, and the court held the custom to be reasonable. 1 Show. 132. But a different rule by which the several underwriters in case of loss are made to contribute, has since crept into practice, and Marshall justly laments that the custom proved *by all the exchange*, seems now to be forgotten. *Marsh.* 149.

In the United States this rule of contribution has been found so inconvenient, that the merchants and underwriters have generally concurred in introducing a clause into policies of insurance, by which the parties subject themselves to the ancient mode of adjustment, in case the property shall be found to have been over-insured; which shows that it is at least conformable to the sense of the mercantile world on this side of the water.

Indeed,

Art. 360. If property has been shipped to the full amount of the insurances made, and part thereof be lost, the insurers shall all proportionally contribute to the payment of the loss.

Art. 361. If insurance be specifically made on goods to be shipped on board of several vessels, with a description of each vessel and of the amount severally insured thereon, and if the whole of the goods be shipped on board of a single ship, or of a less number of ships than is mentioned in the policy, the insurer is only bound for the amount which he has insured on goods by the vessel or vessels on board of which the merchandise has been shipped, although all the ships mentioned in the policy should be lost; and he shall nevertheless receive one half per cent. on the amount which, in consequence thereof, remains uninsured.

Art. 362. If the captain be allowed to touch at different ports to complete or barter his cargo, the merchandise does not begin to be at the risk of the underwriter until it is actually shipped, unless there be an agreement to the contrary.

Art. 363. If insurance be made for a limited time, the insurer is discharged after its expiration, and the insured may again cause his property to be insured.

Art. 364. The insurer is discharged and the premium earned, if the insured sends the vessel to a more distant port than that mentioned in the policy, although on the same route.

The insurance has its full effect, though the voyage be shortened.

Art. 365. Every insurance made after the loss or arrival of the property insured, is null and void, if it can be presumed that the insured might have known the loss, or the insurer the arrival thereof.

Art. 366. The presumption exists, (independent of other proofs) if it be proved that the news thereof might have been brought from the place where the vessel was lost, or arrived, or where such event was first known, to that where the insurance was made, before the signature thereof, allowing three quarters of a *myriamètre* (135) to an hour.

Art. 367. If however the policy contain the clause of "lost or not lost," (136) the presumption (137) mentioned in the next preceding articles does not obtain.

Indeed, justice seems to require, that after an underwriter has *purchased* all the insurable risk of a vessel or cargo, no third person without his consent should be permitted to interfere with his bargain, or to enlarge, restrict or modify it in any manner. The risk, good or bad, is his own, and we cannot discover any principle, on which the insured, after once parting with it, may legally dispose of it again.

It is greatly to be wished, that a uniform rule on this subject might be adopted in all countries. For if insurance be made, as is not unfrequently the case, on the same property in different places where different rules prevail; how, in case of loss, can any reasonable adjustment be effected on such opposite principles?

(135) About four miles.

(136) The French phraseology is *sur bonnes ou mauvaises nouvelles*, on good or bad news.

(137) In countries which are not blessed with the admirable institution of *trial*

In such case, the policy is only avoided when it is proved that the insurer knew of the loss, or the insured of the arrival of the vessel before the signing of the said policy.

ART. 368. If the fact be proved against the insured, he pays a double premium to the insurer.

If against the insurer, he pays to the insured double the amount of the stipulated premium.

Whichever of them is proved to be in fault, is liable to punishment by the correctional police.

SECTION III.

Of Abandonment. (138)

ART. 369. Abandonment may be made of property insured, in cases of

Capture,
Shipwreck,
Stranding, with partial shipwreck,
Insufficiency of the ship in consequence of the perils of the sea,
Arrest by a foreign prince,
Loss or deterioration of the property insured amounting to at least three fourths of the value thereof.

by jury, as little as possible should be left to the *presumption of man.* Therefore, the French Code has wisely substituted in its stead the *presumption of the law.* In England and America, the law has no need of *artificial presumptions;* it knows none but those which naturally result from the genuine facts and circumstances of the case, operating upon the minds of an honest, intelligent, free and impartial JURY.

(138) In order that some parts of this section may be more easily and clearly understood, we think it necessary to give here a short, connected and practical view of the proceedings which take place in France between the insured and insurer, in cases of total loss. The insured is bound (art. 374) within three days after receiving information of the loss, to give notice of it to the insurer. It is done by a formal notification made by a notary public or *huissier;* for the proof of *notices* is not there, as with us, a matter *in pais*, and parol evidence of the service thereof is not admitted. At the same time the insured may, if he pleases (art. 378) make his abandonment, if not, he declares in the instrument which is drawn up of the notice, that he reserves to himself the right of making it within the term allowed by law. This is a kind of protestation to obviate the presumption of an implied waiver on his part of the right to abandon. To make his actual abandonment, the law allows him (art. 375) the term of six months, if the loss happen in Europe, or the Mediterranean, and one or two years according to the distance of places, if elsewhere. The reason of allowing so much time will be explained in a subsequent note. If afterwards, at any time within the legal limitation, the insured thinks proper to abandon, he does it, in the same form that we have above mentioned with respect to the first notice, by an instrument drawn up, and notified to the insurer, by a public officer, or, if he thinks proper, he may do it in judicial form, as will be explained in a note to art. 431. He must communicate at the same time (art. 383) certified copies of the proofs of property (invoice, bills of lading and the like) and of the proof of loss, which is generally the master's protest, accompanied with the certificates of survey, condemnation or other similar documents. He must also declare (art. 379) what other insurance he has caused to be made, and what moneys he has borrowed at maritime risk on the property insured. The instrument concludes with a notice, that payment of the loss will be required after the expiration of the term stipulated in the policy. If after the ex-

Abandonment may also be made in case of detention by government after the voyage begun. (139)

ART. 370. Abandonment cannot be made before the commencement of the voyage.

ART. 371. Every other loss or damage is reputed *average*, and is adjusted between the insurers and the insured in proportion to their respective interests.

ART. 372. The abandonment of insured property cannot be partial or conditional.

It extends only to the subject matter of the insurance and risk.

ART. 373. Abandonment must be made to the insurers within the term of six months from the day on which is received the news or information of the loss having happened in the ports or on the coasts of Europe or those of Asia or Africa on the Mediterranean sea; and in case of capture, within the same period after intelligence received of the vessel being carried into a port or place situate on some one of the coasts above mentioned.

Within one year after the news or information received, if the loss happen in or the prize be carried to the West Indies, the islands of Madeira, Azores or Canaries, or to some other island, or coast to the west of Africa or to the east of America.

Within two years after receiving the news of the loss or capture, if it happen or take place in any other part of the world. (140)

piration of that term, the insurer does not pay, the insured cites him to appear before the tribunal of commerce, where the cause is heard summarily on the documents exhibited, and although the insurer (art. 384) may contradict and rebut them by other evidence, even by parol proof, as, for instance, if he means to disprove the fact stated in the protest, yet unless he exhibits very clear and conclusive documents, such as a receipt or the like, or shows some very strong presumptions of fraud on the part of the insured, it does not prevent judgment from being given provisionally against him, but in that case, the insured who receives the money, is bound to give security for refunding it with interest and costs, in case of a reversal of the judgment on a review or appeal. The *primâ facie* evidence, if perfectly regular, if no cause of doubt appears on the face of it, and it is uncontradicted by proof equally clear, is held to create a sufficient presumption of right, to intitle the party in whose favour it operates, to the possession of the money in controversy, until final judgment, and it also has the effect of preventing dilatory litigation, and the interposition of appeals, for the sake of mere delay. This mode of proceeding which, however, only takes place in commercial tribunals, and in mercantile cases, is not peculiar to France; it is practised in Spain, Italy and other countries, and is as ancient as the *Consolato del Mare*, Consol, c. 21. 24. Roccus goes so far as to say, that it is founded on the principles of the general maritime law. *Ex generali lege maritimâ sancitur, quod contrà assecuratores agatur viâ executivâ, et nullâ exceptione,* TAM JUSTA QUAM INJUSTA, *impediatur executio contractûs assecurationis.* Rocc. de assec. not. 100.

(139) That is to say, after the ship has set sail; for, until then, even the insured may break up the voyage, paying one half per cent. to the insurers, by way of indemnity. See above, art 349. See also *Ord. de la Mar.* h. t. art. 37. *Le Guidon*, c. 9. art. 12; and 2 *Emer.* 48. The same rule obtains in Spain and Italy. *Ordin. of Bilb.* c. 22. art. 23. *Casa Regis*, disc. 67.

(140) This requires a particular explanation, as the laws of France and England proceed in this respect upon directly opposite principles. By the English law the insured is compelled immediately, or at least within a very short time after receiving the news of the loss, to make his election whether or not he will abandon to the underwriters. Abandonment is thus in a great degree, if not entirely assi-

After the expiration of these several periods, the insured can no longer abandon.

Art. 374. In cases in which abandonment may be made, and in all cases of loss or accident within the risks of the policy, the

milated to the notice which the law requires to be given to the drawer or indorser, of the protest of a bill of exchange, (*Mitchell* v. *Edie*, 1 Term Rep. 613,) and nearly on the same principle. For, the reason which is adduced, is, that the insured must not lay by to avail himself of the chance of events, and of the profits which may possibly result in case the property is recovered. (*Marsh.* 589.) It is said also that if the property be immediately abandoned, the insurer may, by himself or his agents, take the necessary measures for its recovery, whereas the insured or those whom he employs, may be negligent, dishonest or unskilful, and the underwriter may ultimately suffer by their ignorance or misconduct. See the case of *Mitchell* v. *Edie*, above cited, and *Allwood* v. *Henckell*, in *Park*, 239. But in France, and indeed in every other country of the continent of Europe, the subject is considered in an entirely different point of view. Abandonment, it is there said, is the last resource of the insured, he ought not to be forced to it, until after he has tried every means in his power to recover his property. While the fate of his ship or merchandise is yet uncertain, he should not be compelled to act in the dark, and to take so important a determination before he is well informed of the real state of things. 2 *Valin*, 118. If his property should be recovered, the insurer has received his premium, and cannot demand any thing more. If profits have even resulted from the apparent loss, the insured is justly intitled to them, who has earned them by his industry; the insurer on the contrary, has no right to expect profit from the misfortunes of the other party, for it is a maxim of every system of jurisprudence, *quod nemo debet locupletari ex alienâ jacturâ;* much less ought one to expect to inrich himself by the very misfortune against which he undertook to provide: and insurance is merely a contract of indemnity and not of gain, *non versatur in lucro.* As to the danger that the insured will not make due exertions to recover the property, his interest is thought to be a sufficient security in that respect. For if there is but little or no hope, it is presumed that he will naturally abandon as soon as possible, and then the insurer may act as he pleases; if on the contrary, there is a prospect not only of recovery, but of gain, he will exert himself to the utmost to attain the object. Besides, there is nothing to prevent the insurer, who has an eventual interest in the property, from making exertions on his side. His right so to do cannot be denied. And after all, if the insured, by his own misconduct or neglect, should prevent the property from being finally recovered, the underwriter may on that very ground refuse to accept the abandonment, and in an action for a partial loss, the court will consider as saved, what might have been so, but for the default of the insured.

On these principles, the French law allows to the insured a time reasonably sufficient to ascertain, before he is compelled to abandon, whether his property is lost or not beyond all hope of recovery, and obliges him in the mean time to labour and travel for the benefit of whom it may ultimately concern. If it fixes periods, within which he is at last obliged to make his election, they are merely to be considered in the light of ordinary limitations, *ut sit finis litium;* for the same period of time which limits the right to abandon, limits likewise the right to institute the action of abandonment which is founded upon it. See note to art. 431. Abandonment is considered as a harsh remedy (2 *Emer.* 176.) by which the insurer is compelled, against his will, to become the owner of the property of another, and therefore its limitation is much shorter than that of the action for the recovery of a mere indemnity, which is only barred by the lapse of five years, from the date of the policy. See *post.* art. 432. But the insured, after suffering the term allowed him to make his abandonment to elapse, is not entirely without remedy, for he may still recover in an action of average, which is analogous to our suit *for a partial loss.* "This action," says Emerigon, "is the ordinary mode "of proceeding;—abandonment is an extraordinary remedy allowed *ex favore* "only in certain cases." 2 *Emer.* 176. 178.

By the ordinance of Louis XIV. the period within which the insured was allowed to abandon, was six weeks, if the loss happened, or was first known in the same province of France where the owner resided, and if elsewhere, the term

insured is bound to give notice in legal form to the insurer, of the information which he has received.

Such notice must be given within three days after the receipt of the information.

ART. 375. If after the expiration of one year in ordinary, and two years in long (141) voyages, to be reckoned from the day of the ship's departure, or that referred to in the last advice received, the insured declare that he has received no news or information of his vessel, he may abandon to the insurer, and demand payment of the loss without being bound to prove the same.

After the expiration of the respective terms of one or two years as above, the insured is entitled to the benefit of the terms limited by art. 373, within which he may pursue his remedy. (142)

ART. 376. If the insurance be made for a limited time, and the terms allowed as above for ordinary and long voyages respectively have expired, the loss of the ship is presumed to have happened within the period of the risk.

ART. 377. Those are reputed long voyages which are made to the East and West Indies, the Pacific Ocean, Canada, Newfoundland, Greenland and other islands and coasts of both Americas, Madeira, the Azores, Canaries, and to all the coasts and countries lying on the Atlantic ocean, beyond the streights of Gibraltar and the Sound.

ART. 378. The insured may at the same time that he gives the notice mentioned in art. 374, either make his abandonment, and demand that the loss be paid at the time fixed by the policy, or he may reserve to himself the right of abandoning at any time within the period fixed by law.

ART. 379. The insured is bound when he makes his abandonment to disclose all the insurances which he has made or caused to be made, and even those which he has ordered to be made, as well as the money which he has taken up at maritime risk, on the vessel or goods, and in default thereof, the term of payment which otherwise should have begun to run from the day of the abandonment, shall only begin from that on which he shall communicate

was gradually enlarged to two years, according to the distance of places. This arrangement was found inconvenient, and the periods too short in many cases. Emerigon preferred the regulation of Amsterdam, which allowed eighteen months for losses happening in Europe, and three years for those happening in other places. 2 Emer. 268. The compilers of this Code thought it best, it seems, to steer a middle course.

In the United States, the inconvènience of allowing too short a time to the insured, to make his abandonment, has already been felt, and it is remarkable, that the underwriters, for whose benefit the rule seems to have been introduced, have been the first to find fault with it. See *post.* note 145.

(141) See *post.* art. 377, and above, note 81.

(142) The expiration of the respective terms of one and two years, without any news having been received of the vessel, places the insured in the same situation, as if he had at that moment been informed of the actual loss of his property. Therefore, the limitations only begin to run from that time.

the said facts, while on the other hand, the term limited for making the abandonment shall not be enlarged.

ART. 380. If the insured gives in a fraudulent statement he shall be deprived of the benefit of the insurance, and shall be bound to pay the sums borrowed at maritime risk notwithstanding the loss or capture of the vessel.

ART. 381. In case of shipwreck, or stranding with partial shipwreck, the insured must use his best endeavours to save the property, without prejudice however to his abandonment to be made in proper time and place.

The expenses of salvage shall be allowed to him on his affirmation (143) to the amount of the value of the property saved.

ART. 382. If the term of payment be not fixed by the policy, the insurer is bound to pay the loss within three months after the abandonment has been notified to him.

ART. 383. The proofs of property and loss are to be communicated to the insurer, before bringing a suit against him for the payment of the sum insured.

ART. 384. The insurer may rebut those proofs by contrary evidence.

He may nevertheless be adjudged, though he offers such evidence, to pay provisionally the amount of the loss, the insured giving security for the same.

The security is exonerated after the expiration of four complete years, if within that time no suit has been brought against him.

ART. 385. After the abandonment made and accepted, or adjudged to be valid, the property insured belongs to the insurer from the day (144) on which it was abandoned.

The insurer cannot under pretence of the vessel having returned refuse the payment of the sum insured.

ART. 386. The freight of the goods saved from shipwreck, even though it be paid in advance, passes by the abandonment of the vessel and goes also to the insurer, without prejudice to the rights of lenders at maritime risk, of the mariners for their wages, and of all others for the expenses incurred during the voyage.

ART. 387. In case of detention of princes, the insured is bound to notify the same to the insurer within three days after receiving information thereof.

Property so detained cannot be abandoned until six months after

(143) It is often difficult to prove the several items of an account of this description. Among merchants, such accounts are generally admitted, if they appear reasonable. The French courts therefore admit them on the oath of the party; but it does not preclude his adversary from contesting their reasonableness, calling for letters, papers, documents, &c. when such exist, and in short from contradicting the same by any evidence in their power.

(144) That it is to say, the property insured belongs from that time *absolutely* to the insurer; otherwise, the French law considers the abandonment to work by retrospection to the beginning of the voyage. 2 Emerig. 196. 222. On this principle the insurer of the ship is charged with extra provisions, wages, &c. and the underwriter on the cargo with the freight and other expenses, which the property has incurred, during the continuance of the risk.

notice given thereof, if the detention took place in European seas, the Mediterranean or the Baltic.

Nor until one year after such notice, if the detention took place in more distant countries. (145)

These terms begin only from the day of notice given of the arrest or detention.

If the merchandise so detained is of a perishable nature, the above mentioned periods are reduced to one month and a half in the first case, and three months in the second.

Art. 388. The insured are bound during the periods above mentioned, to use their utmost endeavours to obtain the release or restitution of the property detained.

The insurers may, concurrently with the insured, or severally, employ the means in their power to obtain the same end.

Art. 389. A vessel cannot be abandoned on the ground of insufficiency, if she can be again set afloat, repaired and put in a condition to proceed to the place of her destination.

In such case the insured preserves his rights and remedies, against the insurers for the expenses and average occasioned by the stranding of the vessel.

Art. 390. If the vessel be declared unfit for sea, the owners of the cargo insured, are bound to give notice thereof to the insurer, within three days after receiving such information.

Art. 391. In such case, the master is bound to use his best endeavours to procure another vessel to carry the merchandise to the place of its destination.

Art. 392. In the case mentioned in the last preceding article, the merchandise shipped on board of another vessel, is at the risk of the insurers, until its safe arrival and discharge.

Art. 393. The insurer is moreover bound for average and the charges of unloading, storage, re-shipment, extra freight, and all other expenses which might have been incurred to preserve the merchandise, up to the amount of the sum insured.

Art. 394. If within the term prescribed by art. 387. the master cannot procure another vessel on which to reship the merchandise, and bring it to the place of its destination, the insured may abandon the same.

Art. 395. In cases of capture, when it is not in the power of the insured to give information thereof to the insurer, he may redeem the property without waiting for his orders.

The insured is bound to inform the insurer as soon as it is in his power of the compromise which he has made with the captors.

Art. 396. The insurer is at liberty to take the compromise for his own account, or to refuse it; he is however bound to make his

(145) This rule has been adopted in the United States, since American property has become exposed to frequent captures, by the cruizers of the belligerent powers of Europe. A clause is now generally inserted in policies of insurance, by which the insured promise not to abandon, in case of capture or detention by a foreign prince, until the expiration of a stated period, (varying from sixty days to six months) after advice thereof, unless the property be previously condemned. See above, note 140.

election known to the insured within twenty-four hours after receiving notice of the compromise.

If he declare that he takes the compromise for his own account, he is bound to contribute without delay to the payment of the sum agreed upon according to the terms of the contract, and in proportion of his interest; and he contiues to bear the risks of the voyage, agreeably to the policy of insurance.

If he declare that he waives the benefit of the compromise, he is bound to pay the sum insured, and has no claim whatever on the property redeemed.

If the insurer has not notified his determination within the term above mentioned, he is considered as having waived the benefit of the compromise. (146)

TITLE XI.

Of Average.

Art. 397. All extraordinary expenses incurred on account of the ship, the cargo, or both, as well as all damage happening to the vessel and goods from the time of their lading and departure until their arrival and discharge, are reputed *average*.

Art. 398. If there be no special agreement between the parties, average is settled and adjusted on the following principles.

Art. 399. There are two descriptions of average: gross or general, and simple or particular.

Art. 400. The ensuing fall under the description of general average, to wit:

1. Things given by way of compromise for the redemption of the vessel and cargo,
2. Things that are cast away or thrown overboard,
3. Cables or masts broken or cut down,
4. Anchors and other things abandoned for the common safety,
5. Damage suffered in consequence of jettison, by the merchandise remaining on board of the vessel.
6. The cure and maintenance of mariners wounded in the defence of the ship, the wages and maintenance of seamen during the time that the vessel is detained in the course of her voyage, by a sovereign or prince, and while

(146) The reader will probably wonder at not finding any thing in this title, nor indeed in the whole code, on the subject of *warranty*, which makes so conspicuous a figure in the English law of insurance. The fact is, that that doctrine is peculiar to the British system of mercantile jurisprudence; according to which every clause in a policy, in which the words *warrant* or *warranty* are used, is construed strictly as against the *warrantor*, and liberally in favour of the *warrantee*, who in almost every case is the insurer. The French law on the contrary, considers commercial contracts as engagements founded entirely on good faith, which are to be construed liberally and equitably, without regard to any form or set of words, or to technical niceties. It does not therefore distinguish a warranty from any other promise, and is contented to inforce it according to its *bonâ fide* import and meaning, and the intention of the parties.

she is repairing in consequence of damage voluntarily suffered for the common safety, if the vessel is freighted by the month. (147)

7. The charges of unlading in order to lighten the ship and facilitate her entry into a port or river, when compelled thereto by stress of weather, or by being chased by an enemy.
8. The expense of setting the vessel afloat when stranded, to prevent her total loss or capture.

And, in general, the damage voluntarily suffered, and expenses incurred, after a formal deliberation and resolution stating the causes and motives thereof, for the safety of the ship and goods, from the time of their shipment and departure to that of their arrival and discharge.

ART. 401. General average is borne by the merchandise and one half of the vessel and freight, in proportion to their respective value.

ART. 402. The merchandise is valued at the price that it was worth at the port of delivery.

ART. 403. The following come under the description of simple average, to wit:

1. The damage happening to the merchandise from its internal defects, through stress of weather, or in consequence of capture, shipwreck or stranding,
2. The expenses incurred to save it,
3. The loss of cables, anchors, sails, masts or cordage, occasioned by storms or any other peril or accident of the sea,

The expenses resulting from having put into one or more ports, either on account of the accidental loss of the said articles, or for want of provisions, or to stop a leak,

4. The wages and provisions of the ship's company during the ship's detention by a foreign prince in the course of her voyage, and while she is repairing, if she is freighted for the voyage,

(147) But those expenses are only simple average, if the ship be freighted for the voyage, *post.* art. 403. No. 4. The same distinction is made in the ordinance of Louis XIV. h. t. art. 7. M. Valin is at a loss as well as ourselves to comprehend the reason of it, particularly as it appears to be in contradiction with the 7th article of the same ordinance, title *Freight*, and the 5th article of the title concerning mariners' wages. To make the reader understand the manner in which those several articles contradict each other, and in what points of view they are objectionable, would require a long, and to us an useless explanation; we think it sufficient to refer to Valin's full and able discussion of the subject, in the second volume of his Commentary on the ordinance, page 168.

The compilers of this code do not appear to have profited by the reflections of that excellent commmentator. For they have copied the contradictory and objectionable articles without endeavouring to modify, explain or reconcile them. On comparing the articles 254 and 300 with those of the ordinance that are quoted above, they will be found to be substantially the same, and liable to the same objections. This is not the only instance in which this work is liable to a similar reproach.

5. The wages and provisions of the ship's company during quarantine, whether the vessel is hired for the voyage, or by the month.

And, in general, the expenses incurred for, and damage suffered by, the ship or merchandise alone, from the time of their shipment and departure, to that of their arrival and discharge.

ART. 404. Simple average is paid by the owner of the property, which has received the damage or occasioned the expense.

ART. 405. The damage suffered by merchandise in consequence of the master's neglecting to keep the hatches closed, and the ship well fastened, or not providing good tackle and ropes, and generally all other accidents occasioned by the negligence of the master or seamen, fall likewise under the description of simple average, and are borne by the owner of the goods, who preserves his right and remedy for the same against the master, ship and freight.

ART. 406. Loadmanage, towage and pilotage into or out of a port or river, all duties for clearance, search, reports, tonnage, lighthouse, anchorage and other navigation dues, are not considered average, but are merely expenses at the charge of the vessel.

ART. 407. In case of *collision*, or vessels running foul of each other, if the occurrence was accidental, the damage is borne by the vessel that has received it, and there is no remedy against the other vessel.

If the collision took place by the fault of the master of either vessel, the damage is paid by him who was in fault.

If there be any doubt as to which occasioned the collision, both vessels shall contribute in equal portions, to the expenses of repairing the damage suffered.

In the two last cases, the appraisement of the damage is made by surveyors officially appointed.

ART. 408. A demand of average cannot be admitted, if the general average does not exceed one per cent. on the aggregate value of the ship and goods, and if the simple average does not also exceed one per cent. of the value of the article damaged.

ART. 409. The clause *free from average*, exonerates the insurers from all general or simple average, except in those cases in which there is sufficient cause for abandonment, and then the insured have their choice, either to abandon and claim for a total loss, or to sue for an average or partial loss. (148)

(148) And may sue for a partial loss after the expiration of the time limited for making the abandonment. See above, note (140). We are informed that the same principle has lately been recognised in England, by lord Ellenborough, in the case of *Barker* v. *Atkins*, tried at the Nisi Prius sittings at Guildhall, London, on the 29th of last July. That case was an insurance from New York to any port in the Baltic. The vessel was captured by a boat from shore as she was hovering near her port of discharge. The loss was known in December 1810, but the assured did not abandon until the month of April. Lord Ellenborough held that the abandonment was too late, but he told the jury that in making up their estimate of a *partial loss*, the only thing to deduct from the total loss was the chance of recovering the cargo, and the jury would consider how much they thought that chance worth. The jury found for the plaintiff, damage on average loss, 80 per cent. *Gaz. U. S.* Oct. 5, 1811.

A similar

TITLE XII.

Of Jettison and Contribution.

ART. 410. If in consequence of a storm, or being chased by an enemy, the master thinks himself obliged, for the safety of the vessel, to cast away part of his lading, to cut down his masts, or let go his anchors, he takes the advice of the owners of the cargo who may be on board of the vessel, and of the principal persons of the ship's company.

If they differ in opinion, that of the master and principal mariners shall prevail.

ART. 411. The articles of the least necessity, those that are the heaviest and of the least value are first thrown overboard, and afterwards the merchandise stowed betweeen decks at the choice of the master, and with the advice of the principal persons of the ship's company.

ART. 412. The master is bound, as soon as it is in his power, to commit to writing the deliberation which takes place.

The deliberation specifies:

The motives which have determined the jettison,

The articles thrown overboard, or damaged.

It contains the signature of the persons who have assisted at the deliberation, or their reasons for not signing the same.

It is transcribed on the ship's register or journal.

ART. 413. The master is bound, within twenty-four hours after his arrival at the first port, to confirm by his oath the facts contained in the deliberation inscribed in his register or journal.

ART. 414. A statement of the loss and damage is made at the port of delivery by skilled and intelligent referees (149) on the requisition of the master.

The referees are appointed by the tribunal of commerce, if the ship is unladen in a French port.

And by the justice of the peace, if there is no tribunal of commerce.

If the vessel is unladen in a foreign port, the referees are appointed by the consul of France, and if there is no consul, by a magistrate of the place.

A similar decision was given in 1803, by the Supreme Court of Pennsylvania, in *Watson & Paul* v. *The Insurance Company of North America*, 1 Binney, 47.

(149) *Des experts.* This word in the French law means persons of skill and experience in a particular art, trade or profession, appointed by a court of justice to report on a particular fact connected with their branch of business. Thus, when a survey is to be made of a ship or cargo, in order to see whether the one is seaworthy or the other damaged, the court appoints ship-masters, carpenters and other persons who are conversant in matters of the kind. If a signature is to be tested by comparison of hands, writing-masters are appointed to examine and report on it. On the same principle, the adjustment of average accounts is referred to persons well acquainted with business of that nature, and those various descriptions of surveyors, referees, examiners, &c. are known in law under the general denomination of *experts*, the meaning and derivation of which are sufficiently obvious. See above, note 109.

The referees are to be sworn before they proceed to make the appraisement.

Art. 415. The goods thrown overboard are valued, according to the market price thereof at the port of delivery, and their quality is ascertained by the exhibition of the bills of lading and invoices, if there be any.

Art. 416. The referees appointed by virtue of the preceding article, adjust the proportions of the loss and damage.

The adjustment after being confirmed by the tribunal, has the force and effect of a judgment.

In foreign ports the adjustment is confirmed and made executory by the consul of France, and if there be no consul, by any competent tribunal of the place.

Art. 417. The adjustment of the loss and contribution is made upon the goods cast away, and those that have been preserved, and upon one half of the ship and freights in proportion to their respective value at the port of discharge.

Art. 418. If the quality of the goods is misrepresented in the bill of lading, and they are found of a greater value than represented to be, they contribute, if saved, in proportion to the estimate made thereof.

And if lost, they are paid for in proportion to the value of goods of the quality mentioned in the bill of lading.

If the goods are found to be of an inferior quality to that which is expressed in the bill of lading, then, if they are saved, they contribute in proportion to the value of goods of the quality expressed in the bill of lading.

And they are paid for in proportion to their real value, if they have been cast away or damaged.

Art. 419. Provisions and ammunition and the clothes of seamen do not contribute towards jettison, the value of those thrown overboard shall be paid for entirely by contribution out of the property saved or preserved.

Art. 420. Articles for which there is no bill of lading or declaration (150) of the master, shall not be paid for, although they be cast away, but, if preserved, they shall contribute.

Art. 421. Articles stowed upon deck contribute, if saved.

If they are thrown overboard or damaged by the jettison, the owner thereof is not admitted to share in the contribution; he can only pursue his remedy against the master.

Art. 422. No contribution is allowed for damage suffered by the vessel, unless it has been done to facilitate the jettison.

Art. 423. If the jettison does not save the vessel, there shall be no contribution.

In that case the merchandise saved is not bound to contribute to any indemnity for that which has been cast away or damaged.

(150) It may sometimes happen that the master in the hurry of departure forgets, or perhaps has not time to attend to the signing of a bill of lading; in that case his declaration on his return into port, supplies the place of it. 2 Valin, 202.

ART. 424. But if the ship being preserved by the jettison, and pursuing her voyage is afterwards lost,

The goods saved contribute in proportion to their value in the condition in which they are found, deducting the expenses of salvage.

ART. 425. The goods thrown overboard do not contribute in any case, to the payment of damage suffered after jettison by the merchandise saved.

The cargo does not contribute for the ship if she is lost, or rendered unfit for sea.

ART. 426. If in consequence of a deliberation, the hatches have been opened to take out the merchandise, it contributes to repair the damage suffered by the vessel in consequence thereof.

ART. 427. In case of the loss of goods put on board of lighters or boats, in order to lighten the ship, in entering a port or river, the ship and her whole cargo are bound to contribute.

If the vessel perish with the remainder of the cargo, the goods put on board of lighters do not contribute, although they reach the port in safety.

ART. 428. In all the above cases, the master and mariners have a lien and privilege on the goods or the proceeds thereof, for the amount of the contribution.

ART. 429. If after adjustment, the goods or articles cast away are recovered by the owners, they shall be bound to refund to the master and others concerned, what they have received of the contribution, deducting the damage occasioned by the jettison and expenses of salvage.

TITLE XIII.

Of Prescription or Limitation of Actions.

ART. 430. The master cannot, by prescription acquire the property of the vessel.

ART. 431. The action of abandonment is barred after the expiration of the terms or periods specified in art. 373. (151)

(151) It is not sufficient that the abandonment be made within the respective periods which the code prescribes, but it is also necessary, in order to prevent the effect of the legal limitation, that a *judicial demand* be made, or, in other words, that a suit be brought against the insurer within the same limited time; otherwise the abandonment, though made with all the requisite formalities, is caducary, and the insured is left to his remedy by action of average. The abandonment may be made in judicial as well as in ministerial form. In the former case, the insured makes it a part of his judicial proceedings, and obtains a judgment against the insurer, by which he is decreed to pay the loss, according to the tenor and effect of the policy. Nay, if he wishes to postpone to the last moment, the exercise of his right to abandon, he may have an interlocutory decree against the underwriter, declaring him liable to pay the loss, total or partial, as the insured may afterwards elect to consider it, reserving to the latter his right to abandon, within the term of limitation prescribed by law. By this mode of proceeding, the proof of the policy, property, and loss, become matters of record, and the insured, making his abandonment in due time, may pursue his further remedy for the recovery of a total loss, or if he chooses to waive that right, may prosecute his action as for an average loss without being barred by the limitations above mentioned.

ART. 432. Every action founded on a contract of maritime loan or policy of insurance, is barred after the expiration of five years from the date of the contract.

ART. 433. The several suits and actions herein after mentioned shall be commenced and prosecuted as follows:

Suits for the payment of freight or mariners' wages, within one year after the voyage ended.

Suits for provisions furnished to mariners by the master's order, within one year after the delivery thereof.

Suits for timber and other necessary articles, sold and delivered, or furnished for the building, equipping and fitting out of a ship or vessel, within one year after the delivery thereof.

Suits for work and labour done and for journeymen's wages, within one year after the finishing of the work, or delivery of the manufactured article.

Suits for the delivery of merchandise, within one year after the arrival of the ship.

ART. 434. There is no prescription or limitation, if the debt is evidenced or secured by a note, obligation or stated account, or if there has been a judicial demand.

TITLE XIV.

Of Peremptory Causes of Nonsuit. (152)

ART. 435. A suit cannot be maintained:

Against the master or insurers, for damage suffered by merchandise, if the same has been received without protesting.

Nor against a shipper or affreighter for contribution to average, if the master has delivered the merchandise and received his freight without protesting.

Nor against any one for damage suffered in consequence of one ship's running foul of another, in a place where the master might have had his legal remedy, and did not avail himself of it.

ART. 436. The protestations above mentioned are null and void, if they are not made and notified to the party within twenty-four hours, and if within one month thereafter they are not followed by a demand at law.

(152) *Fins de non recevoir.* In the technical language of the French law this means a ground of objection on the part of the defendant, that the plaintiff has not made out his case by sufficient legal proof, and therefore that he ought to be nonsuited. There is no corresponding term in our legal practice; for although we frequently say, that a particular objection affords a sufficient ground or cause for a nonsuit, yet those specific objections have never been classed together under a common denomination, as they are in the French system of jurisprudence. We have therefore been obliged to adopt a new mode of expression as nearly consistent as possible with our legal idiom, and which we hope will be found sufficiently clear and intelligible.

BOOK III.

Of Failure and Bankruptcy. (153)

GENERAL RULES.

ART. 437. Every merchant who stops his payments, is in a state of *failure*.

ART. 438. Every merchant who fails and is guilty of some one of the acts of fraud or gross misconduct specified in this law, is in a state of *bankruptcy*.

ART. 439. There are two species of bankruptcy, to wit:

Simple bankruptcy. It shall be tried by the tribunals of correctional police.

Fraudulent bankruptcy. It shall be tried by the courts of criminal jurisdiction.

TITLE I.

Of Failure.

CHAPTER I.

Of the Commencement (154) *of the Failure.*

ART. 440. Every person in a state of failure, is bound within

(153) *Des Faillites et Banqueroutes.* We have already explained above, note 41, the essential difference between these two French denominations. The latter was first brought into use in feudal times, when commerce, then principally carried on by the persecuted and despised Jews, was considered as a base and illiberal occupation, and its misfortunes were not only branded with ridicule, as the words *bankrupt* and *banqueroute* from the Italian *banco rotto (broken bench)* clearly imply, but stigmatized with the general imputation of guilt. Hence bankruptcy in the earliest English statutes is invariably contemplated in the light of an offence, and the bankrupt, however innocent or unfortunate, is indiscriminately styled the *offender*. See Stat. 34 & 35 H. 8. c. 4. 13 Eliz. c. 7. and 1 Ja. c. 15. In process of time and with the progress of civilization, the mercantile profession acquired that weight and consideration in the state to which it is justly entitled, and it was discovered that guilt and misfortune are not necessarily convertible words when applied to merchants. The terms *bankrupt* and *bankruptcy*, therefore, gradually acquired a more rational and at the same time a more determinate meaning; they became generic terms, including every case of mercantile insolvency, in which comprehensive sense they are now used, and never at present involve the idea of guilt but when coupled with the word *fraudulent* or some other of similar import. In France on the contrary the words *banqueroute* and *banqueroutier* have preserved their original signification, but have ceased to be applied to cases of innocent misfortune. The more appropriate term *failure* has been introduced as a word of general description, and when employed in a more restricted sense serves to distinguish fair and innocent from fraudulent or otherwise culpable bankruptcy.

The reader will easily perceive why we have been obliged to employ the French instead of the English terms in this translation. With the only help of the words *bankruptcy* and *bankrupt*, coupled with occasional adjectives, we are satisfied that we could not, without much awkward circumlocution have conveyed to the reader the full meaning of our text. We do not hesitate, nay we think it necessary to make use of the technical language of the English law whenever we believe that it will convey clearer and more precise ideas to the readers' mind, but we cannot forget that we are employed in the translation of a foreign code, and that we should give but a very imperfect idea of it, were we to strip it altogether of its phraseology, which we consider as one of its most peculiar and distinguishing features.

(154) *L'ouverture de la faillite.* The English law does not take notice in terms

three days after and including the day on which he has stopped his payments, to make his declaration thereof in the registry of the tribunal of commerce.

In case of the failure of a partnership under a collective firm, the declaration shall contain the names and places of residence of every one of the joint and several partners.

ART. 441. The commencement of the failure is declared by the tribunal of commerce. The precise time thereof is determined by some one or more of the following circumstances, to wit: 1. The debtor's (155) departure from the place of his usual residence. 2. The shutting up of his comptinghouse or stores. 3. His refusal to pay commercial engagements, evidenced by acts or instruments in due form, which acts and instruments, however, shall not be sufficient evidence of an act or commencement of failure, unless there be an actual stoppage of payments (156) or declaration of the party. (157)

ART. 442. From the day that a failure is commenced, the debtor is divested of all right over his property and the management thereof.

ART. 443. Every lien and privilege on the property of a merchant is void, if obtained within the ten days next preceding his failure.

ART. 444. All voluntary (158) transfers of real property made by the debtor within ten days next preceding the commencement of his failure, are null and void, as against the creditors, and all deeds and conveyances purporting to be made for a valuable consideration, may be set aside on the application of the creditors, if the court shall be of opinion that there is a strong presumption of fraud.

ART. 445. All commercial acts or engagements contracted by the debtor within the ten days next preceding his failure are as far as respects himself, presumed to be fraudulent; they are null

of the *commencement* but of the *act* of bankruptcy, to which every thing subsequent is made to refer. It will be easily observed that the difference lies only in the mode of expression, for in fact the commencement of the failure is the act of bankruptcy, and the act of bankruptcy is the commencement of the failure.

(155) *Du failli.* According to the English phraseology, we should say the *bankrupt's*, but having concluded to make use of the word *failure*, we are much at a loss for a proper derivative. We might perhaps, by way of analogy, have said the *failee*, but the word has an uncouth sound and would not probably be relished. We prefer saying the *debtor*, though we are sensible that it is a more vague and less determinate expression than that of our original. We shall endeavour to be more precise, by the help of a circumlocution or otherwise, whenever the phrase and the context will permit it.

(156) There must be an entire stoppage of payment according to the French law to constitute an actual failure. One or more protests or even unsatisfied judgments, are indeed, partial, but not conclusive evidence of an act of bankruptcy *by stopping payments*, which is contemplated in this article. *Jousse, Comment. sur l'ord. de* 1673, p. 182. *Denisart, Collect. de Jurispr. verbo* Banqueroute, § 14, 15.

(157) Such as is mentioned in Art. 440.

(158) The word *voluntary* here means, *made without good or sufficient consideration.*

and void if they are proved to be such on the part of the other contracting parties. (159)

ART. 446. All sums of money paid within the ten days next preceeding the failure on account of commercial engagements not yet due and payable, shall be refunded.

ART. 447. All acts, contracts and payments made in fraud of the creditors are null and void.

ART. 448. All the debts and engagements of a merchant in a state of failure, though stipulated to be paid at a future day, become *ipso facto* immediately due and payable, but if there are other joint debtors or obligors bound with him by the same contract, they are only bound to give security for the payment of the debt at the expiration of the stipulated term unless they prefer to pay immediately.

CHAPTER II.

Of Affixing the Seals.

ART. 449. As soon as the tribunal of commerce shall be informed of an existing failure, either by the declaration of the party, the petition of some one of the creditors, or public notoriety, it shall issue its decree ordering the seals to be affixed as herein after directed. An exemplification of the decree shall immediately be sent to the justice of the peace, who shall carry the same into execution.

ART. 450. The justice of the peace may affix the seals *ex officio*, on being satisfied by public notoriety of the failure having actually taken place.

ART. 451. The seals shall be affixed upon the stores, compting-houses, coffers, port-folios, books, registers, papers and personal property of the debtor.

ART. 452. In the case of the failure of partners under a collective firm, the seals shall be affixed not only at the principal mansion house of the partnership, but also at the separate domicile of each of the joint and several partners.

ART. 453. In all cases, the justice of the peace shall without delay, transmit to the tribunal of commerce the *procès verbal* (160) of the affixing of the seals.

(159) Sir William Blackstone lays down this doctrine of the French law much too broad, when he says, "that in France, *every act* of a merchant for ten days "previous to the act of bankruptcy is presumed to be fraudulent, and *therefore* "*void*." 2 Black. Com. 486. The edict of Henry IV. of 1609 only annulled sales and alienations made in favour of the children and presumptive heirs of the bankrupt; and the ordinance of 1673. Art. 4. annulled only such assignments, sales and donations as were made in fraud of the creditors. It is true that a subsequent edict made in 1702, declared all grants, obligations, judgments and mortgages, made within ten days preceding the failure to be null and void, but it has ever been construed by the courts of justice to be only applicable to fraudulent instruments and not to extend to those which are made *bonâ fide* and for a valuable consideration. *Jousse* 190, 191. So difficult it often is, as we have observed in another place, to judge from the letter of a law of what it is in practice.

(160) No ministerial act in France in matters of judicial cognisance is done

CHAPTER III.

Of the Appointment of the Commissioner (161) *and Agents.*

ART. 454. By the same decree by which the seals shall be ordered to be affixed, the tribunal of commerce shall declare the time of the commencement of the failure. They shall also appoint one of their members to be *commissioner* (162) of the failure and one or more *agents*, according to the importance of the case, who shall under the inspection of the commissioner perform the duties prescribed to them by the present law.

If the seals have been affixed by the justice of the peace, in consequence of the notoriety of the failure, the tribunal immediately on being informed thereof shall further proceed in manner above directed.

ART. 455. The tribunal of commerce shall at the same time order that the person of the debtor be secured by confinement in the debtor's prison, or that he be placed in the custody of an officer of justice, or of the police, or of a *gendarme*. (163)

While in that situation, he cannot be otherwise detained or taken in execution by virtue of any judgment of the tribunal of commerce.

ART. 456. The agents which the tribunal shall appoint, may be chosen from among the presumed creditors or any other persons whose solvency and fidelity may be best relied upon. The same person cannot be appointed an agent twice in the course of the same year, unless he be a creditor.

ART. 457. The judgment (164) shall be posted up and the substance thereof inserted in the newspapers, in the manner prescribed by art. 683. of the code of civil proceedings.

without a *procès verbal*, in which the facts are stated amidst a great deal of *lengthy* formality, with a degree of minuteness highly profitable to the *verbalising* officers and to the revenue.

(161) The French denomination is *juge-commissaire*, as he is a member of the court the word *judge* is superadded to the inferior title. Such additions are frequent in France and owe their origin to the hierarchical spirit which we have already noticed.

(162) The machinery of this bankrupt system is infinitely more complicated than that of the one which was established by the ordinance of Louis XIV. Part of it, particularly the *commissioner* and the *provisional syndics* which are subsequently mentioned, appears evidently to have been borrowed from the English law. The division of bankruptcy or failure into three classes, innocent, culpable and fraudulent is an imitation of the law of Spain. *Curia Philipica*, B. 2. c. 11. § 5. Other parts are entirely of new and modern invention. The interference of the police, for instance, in the concerns of a merchant and his creditors, (see below art. 489.) we think we may safely say never before entered the heads of European legislators. Such a system must necessarily debase the mercantile profession and character, and extinguish that noble spirit of enterprise, so necessary to make trade flourish, and render a nation commercially great.

(163) The *gendarmes* are a military corps consisting of about 18000 men, divided into legions, squadrons, companies, lieutenancies, and brigades of six or ten men, two thirds of which are infantry and one third cavalry, and are disseminated over the different parts of the empire; they are employed to scour the roads, preserve the public peace, and execute the mandates of the police. Before the revolution, there was in France a similar establishment under the name of *maréchaussée*.

(164) It ought to be understood that every order of a tribunal in France is styled

The judgment may be provisionally carried into execution, but may also be reviewed and set aside on the application of a proper party, made within the respective periods herein after mentioned, to wit: As to the debtor himself within eight days after the posting up of the judgment; as to the creditors present in person or by attorney and all other interested parties, on or before the day on which the *procès verbal* of the proof of debts shall be closed, and as to such creditors as shall have petitioned for further time, before and until the expiration of the last term granted to them.

ART. 458. The commissioner shall report to the tribunal of commerce all the contestations which shall arise out of the failure and which they shall be competent to determine.

It is his special duty to accelerate the preparation of the *bilan* (165) or statement of the debts and credits of the party who has failed, and to see that the creditors are duly and speedily called together; he is to superintend the management of the affairs of the failure, as well while in the hands of agents temporarily appointed, as herein after mentioned, as while under the care of the provisional and afterwards of the final syndics or trustees.

ART. 459. The agents appointed by the tribunal of commerce, shall manage the business of the failure under the inspection of the commissioner, until syndics be appointed; their provisional appointment shall not be for a longer time than fifteen days at most, unless the tribunal shall think it necessary to continue them in office for one other fortnight, but no more.

ART. 460. The tribunal may revoke the agents by them appointed.

ART. 461. The agents cannot enter upon the exercise of their functions, until they have been sworn before the commissioner well and faithfully to perform the duties of their office.

CHAPTER IV.

Of the Preliminary Duties of the Agents and the first Measures to be taken, with respect to the Party under Failure.

ART. 462. If after the agents are appointed and sworn the seals have not yet been affixed, the said agents shall require the justice of the peace to proceed to the affixing thereof.

ART. 463. The debtor's books shall be extracted from under the seals, and delivered by the justice of the peace to the agents,

a judgment or decree. They are divided into three classes: 1. *Preparatory*, which are mere orders for the collection of evidence, issuing of process and such other matters as do not in any manner prejudice the merits of the cause. 2. *Interlocutory*, which without deciding on the merits, yet prejudge them in some degree. 3. And lastly, *final* judgments. *Code of civ. proc. art.* 452. We make use in this translation indiscriminately of the words *order*, *judgment* and *decree*.

(165) From the Latin *bilanx*, because it exhibits the *balance* of the bankrupt's debts and credits. See a more particular description of this document, *post.* art. 471. We are obliged to make use of the French term *bilan*, there being no precisely corresponding expression in the English language.

after being by him duly identified (166); he shall in his *procès verbal* make summary mention of the state and condition in which he found them.

The agents shall collect all the outstanding credits of the debtor and give acquittances therefor, which must be *inspected* (167) and signed by the commissioner. The letters directed to the said debtor, shall be delivered to the agents to be opened. If the debtor be on the spot, they shall be opened in his presence.

ART. 464. The agents shall, with the authorization of the commissioner first had and obtained, proceed to the sale of such goods and commodities, as are of a perishable nature.

The goods that are not perishable cannot be sold by the agents without a special order of the tribunal of commerce, given on the report of the commissioner. (168)

ART. 465. All moneys received by the agents shall be deposited in a chest under two locks and keys as mentioned in art. 496.

ART. 466. After the seals are duly affixed, the commissioner shall make his report to the tribunal, exhibiting a general view of the state of the debtor's affairs, and he may at the same time propose either that the debtor be unconditionally set at liberty, and that a provisional safe conduct be granted to him to prevent his being arrested during the pendency of his failure, or that he be set at liberty and provided with a similar safe conduct, on giving security for his appearance when required, under a penalty to be fixed by the tribunal in their discretion, and which, if forfeited, shall enure and be applied to the use and benefit of the creditors.

ART. 467. If the commissioner shall not propose the granting of a safe conduct, the debtor may petition the tribunal of commerce for the same, who shall determine thereon after first hearing the report and opinion of the commissioner on the subject.

(166) *Arrêtés.* The commissioner affixes his *paraphé* or flourish (the meaning of which word we have already explained, note 13.) at the bottom of every page in the waste book, day book and letter book, and of every account or invoice in the leger, invoice book, &c. so as to identify the several books, and at the same time prevent any additions being made to them.

(167) See the technical meaning of this word above, not. 14.

(168) In the French courts of judicature, every case, the decision of which is not absolutely a matter of course, is referred to one of the judges to consider and report a brief statement of the fact and law, with his opinion thereon. In matters which affect the interest of the State, and in other cases which the law specifies, (See Code of Civ. Proc. Book 2. Tit. 4.) the opinion of the imperial attorney must also be taken and considered. The opinions thus given are called *conclusions*, and therefore judgments generally run in this form: *The court having heard the report and conclusions of —— &c. decree, &c.* When one of the judges, as in the present case, is entrusted with the execution of a separate judicial or ministerial duty, and a question arises, which the court, and not he alone, are competent to decide, he lays the matter before the tribunal in the form of a *report*, which is taken up and decided on after hearing the parties.

Those reports and opinions are not conclusive or binding on the court either in point of law or fact, but it is easy to perceive that the *reporter* has considerable weight and influence in the decision of a cause.

ART. 468. If the debtor has obtained a safe-conduct, the agents shall require his attendance that he may be present at the settlement of the books and accounts.

If he does not attend when required, he shall be formally cited to appear.

If he does not appear within forty-eight hours after the service of the citation, he shall be presumed to be in contempt.

The debtor may however appear by attorney with the approbation of the commissioner, if he show sufficient reasons for not appearing in person.

ART. 469. If the debtor is not provided with a safe-conduct, he shall appear by attorney, otherwise he shall be presumed to be in contempt.

CHAPTER V.

Of the General Statement called BILAN.

ART. 470. If the debtor before the declaration of his failure has prepared his *bilan* (169) or statement of his debts and credits, and of the general state of his affairs, he shall deliver it to the agents within four and twenty hours after they shall have entered upon the exercise of their functions.

ART. 471. The *bilan* must contain the enumeration and valuation of all the debtor's real and personal property, a statement of his debts and credits, profit and losses, and also of his expenses; it must be certified, dated and signed by the said debtor.

ART. 472. If the debtor has not prepared his *bilan*, at the time of the agents entering upon the exercise of their functions, he shall be bound either by himself or his attorney, as is provided by Art. 468 and 469, to prepare and make it up in the presence of the agents, or of such person as they shall appoint.

His books and papers shall be communicated to him for that purpose, but he shall not be allowed to remove or take them away.

ART. 473. If the *bilan* cannot be made up by the debtor or his attorney, the agents shall do it themselves by means of the books and papers of the said debtor, and of such information as they may obtain from his wife, children, (170) clerks or other persons in his service or employ.

ART. 474. The commissioner may also, either *ex officio* or on the application of one or more of the creditors, or even of the agent, examine the persons mentioned in the next preceding article (the wife and children of the debtor excepted,) (171) as well

(169) See above, note 165.

(170) This means *voluntary* information; for by the French law, the wife or children can never be witnesses, for or against the parents or husband. See below, art. 474.

(171) In England, by virtue of the statute, 21 Ja. 1. c. 19. § 6. the wife of a bankrupt may be examined for the discovery of any part of his estate supposed to be concealed; it is held nevertheless that she cannot be examined to prove his bankruptcy, or the time or circumstances thereof. *Ex parte James*, 1 P. Wms. 611. On

respecting such matters as it is necessary they should be informed of, in order to enable them to make out the *bilan*, as respecting the causes and circumstances of the failure.

ART. 475. If the debtor shall happen to die after the commencement of his failure, his widow or children may appear in his place, make out, or assist in making out the *bilan*, and perform every other duty imposed on the debtor by this law; in default whereof, the agents shall proceed *ex parte*.

CHAPTER VI.

Of the Provisional Syndics (172) *or Trustees.*

SECTION I.

Of the Nomination of the Provisional Syndics.

ART. 476. As soon as the commissioner shall have received the *bilan* from the hands of the agents, he shall within three days prepare a list of the creditors which shall be delivered to the tribunal of commerce, and he shall convene the said creditors by means of letters and advertisements posted up and inserted in the newspapers.

ART. 477. The commissioner may call the creditors together, even before the *bilan* is entirely settled, if the case require it.

ART. 478. The creditors shall meet in the presence of the commissioner, on the day and at the place by him appointed.

ART. 479. If any person shall appear at the said meeting as a creditor, and it shall be found afterwards that his debt is fictitious, and that the voucher evidencing the same was fraudulently prepared in concert and by collusion with the debtor, he shall be punished as accessary to a fraudulent bankruptcy.

ART. 480. The creditors present at the meeting shall deliver to the commissioner a list of three times the number of provisional syndics, which in their opinion ought to be appointed, out of which the tribunal of commerce shall proceed to make the appointment.

SECTION II.

Of the time when the Functions of the Agents are to cease.

ART. 481. Within twenty-four hours after the nomination of

the general principles of the common law, the children are competent witnesses, as well for as against their parents, and therefore may of course be examined on any matter concerning their father's bankruptcy.

(172) This is evidently borrowed from the British statute 5 Geo. 2. c. 30. § 30. by which the commissioners are authorized to appoint one or more provisional assignees for the better preserving and securing the bankrupt's estate, until the meeting of the creditors. The only difference is in the French denomination of *syndics*, which we are obliged to preserve in this translation; because, as they do not derive, as in England, any part of their power and authority from an actual assignment made to them by the bankrupt, but the right to dispose of his property is vested in them by the mere operation of law, the English term does not appear sufficiently applicable to them; that of *trustees* comes nearer to the meaning of the French expression, and therefore we have added it by way of explanation.

the provisional syndics, the agents shall cease to exercise their functions; they shall render an account to the said syndics of their agency and of the general state and situation of the business entrusted to them.

ART. 482. The syndics after receiving that account, shall proceed in the business where the agents left it off, and shall be provisionally entrusted with the whole management of the insolvent estate, under the superintendance of the commissioner.

SECTION III.

Of the Compensation to the Agents.

ART. 483. The agents after rendering their accounts, shall be entitled to a compensation which shall be paid to them by the provisional syndics.

ART. 484. That compensation shall be settled according to the nature of the case, on principles which shall be established by a regulation of public administration.

ART. 485. If the agents have been chosen from among the creditors, they shall not receive any compensation whatever.

CHAPTER VII.

Of the Duty of the Provisional Syndics.

SECTION I.

Of taking off the Seals and making the Inventory.

ART. 486. The provisional syndics shall immediately after their appointment require that the seals be taken off, and proceed to make an inventory of the debtor's estate and property. They may call in to their assistance such appraisers as they may think proper, conformably to Art. 937 of the code of civil procedure. Every article shall be inventoried as the seals are taken off the same; the justice of the peace shall be present and shall sign the inventory at the end of each sitting.

ART 487. The debtor shall be present or duly cited to be present at the taking off of the seals and making of the inventory.

ART. 488. The agents and provisional and final syndics shall be bound in every case of failure to deliver to the magistrate of public safety (173) for the district, within eight days after entering upon

(173) The person who is here decorated with this specious title, is the officer who is commonly called *Commissary of the Police:* although styled a magistrate, and having in certain cases the power of commitment, yet his functions are more properly of the *ministerial* than of the *judicial* kind. Officers of this description are not considered as *judges*, and have no *jurisdiction*, in the proper sense of the word. See *Ferriere* and *Denisart*, verbo *Commissaires au Châtelet.* But their powers are otherwise very great in matters relating to the public peace, and to the preservation of good order. They are moreover well known to be the direct agents of the government, and the principal channels through which it becomes possessed of its extensive information respecting the character, affairs and conduct of individuals throughout the empire. Until this code was framed, the peaceable concerns of merchants had never been subjected to the control of that formidable branch of the public authority.

the exercise of their functions, a report or summary statement of the apparent state of the failure, of its principal causes and circumstances, and of its apparent character of fairness, imprudence, misconduct or fraud.

ART. 489. The magistrate of public safety may, if he thinks proper, repair to the domicile of the party or parties under failure, be present at the making up of the *bilan*, inventory and other acts concerning the same, require every fact, matter and thing resulting therefrom to be communicated to him, and in consequence thereof proceed *ex officio* and without costs, to do any official act or institute any prosecution that the case may require.

ART. 490. If he presume that the case involves a simple or fraudulent bankruptcy, or if a warrant of arrest has been issued against the party, he shall immediately give information thereof to the commissioner of the tribunal of commerce, and it shall not be lawful for the said commissioner to propose, nor for the tribunal to grant a safe-conduct to the debtor under such circumstances. (174)

SECTION II.

Of the Sale of the Merchandise and other Personal Property, and of the Collection of the outstanding Debts.

ART. 491. The inventory being closed, the merchandise, title-deeds, money and evidences of property or credits, and all the personal effects of the debtor, shall be delivered to the syndics, who shall charge themselves therewith by a memorandum at the foot of the said inventory.

ART. 492. The syndics, with the authorization of the commissioner, shall proceed to the collection of the outstanding credits of the debtor.

They may also proceed to the sale of his merchandise and effects, either by public sale or by the agency of brokers at the public exchange, or otherwise, by private sale, as they may think proper.

ART. 493. If the debtor has obtained a safe-conduct, the syndics may employ him to assist them in the management of his affairs, allowing him for his services a reasonable compensation in their discretion.

ART. 494. From the moment that the agents and afterwards the syndics, shall enter upon the exercise of their respective duties, all civil suits brought before the failure by an individual creditor against the person or personal property of the debtor, shall be proceeded in against the agents and syndics, and every suit which shall be instituted after the commencement of the failure, shall be brought against the agents and syndics, and no others.

(174) Thus the mere presumption or suspicion of a *police officer*, is sufficient to tie up the hands of a regular tribunal of competent jurisdiction, and to subject the unfortunate party to imprisonment, without bail or mainprize, until he is finally convicted or acquitted, or until the police magistrate is pleased to say that his suspicions were groundless, and that he will not further prosecute.

ART. 495. If the creditors have some reason to find fault with the conduct of the syndics, they shall make their complaint to the commissioner who shall take order therein, if there be cause, or shall lay the matter before the tribunal of commerce.

ART. 496. The proceeds of the sales and collection of outstanding debts, shall be deposited, after deducting the costs and expenses, in a chest provided with two locks and keys; one of the keys shall be delivered to the senior agent or syndic, and the other to such creditor as the commissioner shall appoint for that purpose.

ART. 497. A cash account shall every week be delivered to the commissioner, who on the application of the syndics, and as circumstances may require, shall order, if in Paris, the whole or part of the money on hand to be deposited into the chest of the sinking fund; (175) and, if in the departments, into the hands of the deputy treasurer of the said fund, and the interest which may be allowed for the sums so deposited, shall be for the use and benefit of the creditors.

ART. 498. No money that is deposited in the chest of the sinking fund, shall be drawn from it but by virtue of an order or warrant from the commissioner.

SECTION III.

Of Conservatory Acts (176).

ART. 499. The agents and afterwards the syndics, shall be bound from the moment that they shall enter upon the exercise of their respective duties, to do all necessary acts for the preservation of the rights of the party under failure, against those who are indebted to him.

They shall be bound to cause an *inscription* or entry of record to be made at the *hypothecation office* (if it has not been previously done by the debtor himself) of all the debts and claims, (if any such he has) which entitle him to a lien on the real estates of those indebted to him. (177) The entry shall be made in the name of the

(175) *Caisse d'amortissement.*

(176) Every legal formality which is intended to secure existing or eventual rights, is called in the French law *acte conservatoire*. Were we to adopt the same phraseology, the entering up of a judgment by virtue of a warrant of attorney in order to bind the defendant's lands, the registering of a mortgage, the notice given to the drawer or indorser of a bill of exchange and other similar legal steps, either precautionary or preliminary to the institution of a suit at law, would all come within the meaning of that expression.

(177) We have already spoken with deserved praise, above, note 71, of the French hypothecation system. Perhaps it will not be thought uninteresting to our readers to give them here a summary view of it. Hypothecation, according to the French law, is either express or tacit, legal or judicial. *Express* or *conventional* hypothecation is that which is created by the consent of parties, and is analogous to our contract of mortgage. This the law requires to be special: that is to say, that the property bound to the performance of the party's engagements, must be specifically *designated. Tacit* hypothecation, otherwise called *privilege*, is a general or special lien or right of priority attached to certain classes of debts and contracts. For instance, the carpenter who builds a house, the material-men who repair a ship, and the creditor who lends his money expressly to be applied to either of these pur-

agents and syndics, who shall annex to the list of their claims, a certified abstract of the decrees by which they have been respectively appointed.

ART. 500. They shall likewise be bound to take an *inscription* in the name of the creditors at large, on all the real estates and property of the party under failure which may be known to them. The inscription shall be made on the filing of a short memorandum —stating the existing failure, and mentioning the date of the decree by which the syndics and agents have been appointed.

SECTION IV.

Of the Verification or Proof of Debts.

ART. 501. The verification or proof of the debts shall be proceeded to without loss of time; the commissioner shall see that it is attended to with diligence, and that the creditors be not delayed.

poses, have a lien on the property which their labour or money has been employed to raise or preserve, and in cases of death or insolvency, a general lien or privilege is granted to certain debts, such as funeral expenses, physicians' fees, legal costs, servants' wages, &c. on all the real and personal property of the bankrupt or deceased. *Legal* hypothecation is created by operation of law, and attaches to certain situations in life which are considered as subjecting the party to peculiar responsibility. Thus, wives have a general lien on all the property of their husbands to insure to them and their children the performance of the covenants contained on his part in the marriage articles. The property of guardians is bound in like manner to their pupils for the faithful administration of their estates, and the payment of the balance of the guardianship account, and that of public officers is answerable to the government for the faithful application of the public moneys which come to their hands. And lastly, *judicial* hypothecation is the lien which results from a judgment of record on all the defendant's real property.

In order that the number and extent of those various liens may be easily ascertained, as applying to any particular estate, an office is established in each judicial *arrondissement* or district throughout the empire, which is denominated *Bureau pour la conservation des hypothèques*, and the officer at the head of it is styled *conservateur*. Every person who is intitled to a lien on real property by contract, judgment or otherwise, is bound to enter or *inscribe* his claim in the hypothecation office of the district where the land is situated, which is called *taking an inscription*. There is no term limited for making this entry, but as the several claims take precedence of each other, only from the moment of their being thus inscribed, without regard to the dates of the deeds or judgments by which the lien was originally created, it is thus made the interest of every one to enter his claim as soon as possible. The government itself is bound to go through that formality, otherwise its liens are postponed to those that have been previously entered. Idiots, lunatics, minors and married women alone preserve the priority of their liens, although their claims have not been filed, unless it is neglected to be done after reasonable notice given to them, or to those under whose care or guardianship they are. By means of these salutary provisions, a purchaser may always know by examining the records of a single office, what are the existing charges on the land offered to him for sale in a particular district, and if those charges happen to exceed the amount of the purchase money, he needs but give notice of his contract to the creditors, and if within a given time after such notice, they do not require the property to be exposed to public sale, and not only offer, but give security to bid, at least, ten per cent. above what he has paid or contracted to pay for it, he holds it for ever free from incumbrance. This last mode of proceeding is said to *purger les hypothèques*, that is to say, to clear the land from all antecedent liens. See Code Napol. B. iii. tit. 6.

Such are the general outlines of this system; its details, which are numerous, all tend to the same object, to quiet the title of the purchaser, and at the same time prevent the security of the creditors from being impaired. The government draws a considerable revenue from this establishment.

ART. 502. Notice shall be given to all the creditors by letters from the syndics and advertisements inserted in the newspapers, to appear within forty days, either in person or by attorney before the said syndics, in order to declare to them the nature and amount of their respective demands, and to deliver to them the evidences thereof or deposit them in the registry of the tribunal of commerce. A receipt shall be given to them for the same.

ART. 503. The debts shall be proved in adversary form before the commissioner, in the presence of the syndics, who shall make their objections, if any they have, and the commissioner shall draw up a *procès verbal* of the whole. This shall be done within the fifteen days next ensuing the expiration of the term limited by the next preceding article.

ART. 504. Every creditor whose debt has been proved and sworn to, may be present at the verification of the debts of other creditors and offer his objections to the proofs already made or to be made.

ART. 505. The *procès verbal* of verification shall mention the exhibition of the vouchers or evidences of debts, the domicile of the creditors and of their attornies.

It shall contain a summary description of the vouchers exhibited, which shall be compared with the books of the party under failure.

It shall mention the erasures or interlineations which may appear in the said books.

It shall declare that the holder of the voucher is a lawful creditor for the sum by him claimed.

The commissioner may, if sufficient cause shall appear, require the creditors to produce their books or an extract therefrom, made by the commercial judges of the place where they reside, by virtue of compulsory process obtained for that purpose; he may also *ex officio* refer the case to the tribunal of commerce who shall decree on his report.

ART. 506. If the debt be not objected to, the syndics shall sign on each of the exhibits the following declaration.

Admitted as a just debt—In the case of the failure of —— for the sum of —— the —— day of ——. The commissioner shall certify at the foot of the declaration that he has inspected it.

ART. 507. Every creditor is bound within eight days after his debt has been duly proved, to swear before the commissioner that the said debt is just and true. (178)

(178) In England, the oath of the creditor is considered as the *proof* of the debt. In France, it is but a corroboration of other proofs, nor is it permitted to be taken until every controversy is at an end. The commissioner is the judge in the first instance; he hears the allegations and objections of the creditor on the one hand, and of the syndics on the other; and if, after his investigation the question still remains doubtful, he transmits a *procès verbal*, or statement of the allegations and facts, together with the evidence, to the tribunal of commerce, who finally decides. If the debt is rejected, no further proceeding takes place; if on the contrary it is adjudged to be admissible, the creditor's oath is taken *ex abundantiâ*, in order to obtain every possible security against the exhibition of collusive or fraudulent claims.

ART. 508. If the debt is contested in whole or in part, the commissioner on the requisition of the syndics, may order that the vouchers be exhibited and deposited in the registry of the tribunal of commerce; he may also, without a formal citation, refer the matter to the said tribunal, and adjourn the parties to appear there at a short day, where it shall be heard and determined.

ART. 509. If any controverted facts are to be inquired into by witnesses, the tribunal of commerce may order an inquest to be taken by the commissioner, and may cite all persons to appear before him who are able to give information on the subject.

ART. 510. At the expiration of the terms limited for the verification of the debts, the syndics shall draw up a *procès verbal* containing the names of all the creditors who have not appeared. The said *procès verbal* being closed by the commissioner, they shall be considered as defaulters.

ART. 511. The tribunal of commerce, however, on the report of the commissioner, shall decree a further term for the verification of the debts remaining to be proved.

That term shall be limited in proportion to the distance of the place of residence of the defaulting creditor, so that one day be allowed for three *myriamètres* (18 miles): With regard to creditors residing out of France, the terms prescribed by art. 73, of the code of civil proceedings shall be observed. (179)

ART. 512. Notice shall be given to the creditors of the decree allowing such further time, in the manner and with the formalities prescribed by art. 683 of the code of civil proceedings. Those formalities having been complied with, the non-appearing creditors shall be considered to have been duly notified; nor shall the nomination of the final syndics on that account be delayed.

ART. 513. Those creditors who shall not have appeared, proved their debts and made oath to the truth thereof within the term limited by the decree, shall not be included in the dividends to be made.

They may nevertheless proceed by way of opposition, until the last dividend is finally made; but all such defaulters, even though they were unknown creditors, shall not participate in the dividends finally closed, which with respect to them shall be considered as irrevocably fixed, and they shall be entirely excluded from the share in the said dividends which they might otherwise have claimed.

(179) Those terms are:

Two months for those who reside in Corsica, the islands of Elba or Capraja, in Great Britain, and the countries bordering upon France.

Four months for those who reside in the other European states.

Six months for those who reside out of Europe, but not beyond the Cape of Good Hope.

And for those who reside in countries situated beyond the Cape of Good Hope, one year.

CHAPTER VIII.

Of the final Syndics and their Duties.

SECTION I.

Of the Meeting of the Creditors who have proved their Debts.

ART. 514. The creditors whose debts have been proved and admitted, shall be called together by the provisional syndics, within three days after the expiration of the term limited for the known creditors to swear to their respective debts.

ART. 515. The meeting shall be held under the presidency of the commissioner, at such place and on such day and hour as he shall appoint; no other person shall be admitted there, but the acknowledged creditors or their attornies.

ART. 516. The party under failure shall be summoned to attend at the meeting, where, if he has obtained a safe conduct, he must appear in person, and not by attorney, unless with the approbation of the commissioner on sufficient cause shown.

ART. 517. The commissioner shall verify the powers of those who shall appear at the meeting as attornies; the provisional syndics shall render an account in his presence of the state of the failure and of the formalities and proceedings which have taken place: The debtor shall be heard.

ART. 518. The commissioner shall make out a *procès-verbal* of all and every thing which shall have been said and decided upon at the said meeting.

SECTION II.

Of the Composition, or Compromise. (180)

ART. 519. No compromise can be agreed upon between the creditors assembled at the said meeting and the debtor under fai-

(180) The French term is *concordat*, or *traité*. It is an agreement between the bankrupt and his creditors, the stipulations of which are various according to circumstances. Sometimes it contains on the part of the debtor a general assignment of all his property, in consideration of a general release from the creditors, or the assignment as well as the release are only partial. Sometimes there is neither assignment nor release, but the creditors grant time to their debtor, in nature of what we call here *a letter of license*. In short it is a composition or compromise between the parties, on such terms as they may mutually agree upon.

Before the revolution, the bankrupt system of France was extremely simple in principle as well as practice. The creditors, in ordinary cases, were left to agree with their debtor as well as they could, and whatever was concluded upon between the latter and three-fourths of the former was, after being confirmed by a court of justice, (which was always of course when no fraud was shown) made obligatory on the non-subscribing creditors. This, with some provisions for extraordinary cases, and for the prevention and punishment of fraud in every case, might be said to comprise the whole of the system established on this subject by the ordinance of 1673. The great minister Colbert, to whom it is attributed, appears to have well remembered in this instance the celebrated answer which he is said to have once received from a deputation of merchants, *laissés nous faire*.

Not many years afterwards (in the year 1697) an attempt was made to introduce the same system into England, by stat. 8 & 9 W. 3. c. 18.; but although some provision appears to have been made in it for the prevention of fraud it was not

lure, until the formalities above prescribed have been entirely fulfilled.

No articles of composition can be executed, except with the agreement and concurrence of a majority in number and three fourths in value of the creditors whose debts have been proved, agreeably to the fourth section of chapter VII., otherwise such articles shall be null and void.

ART. 520. The creditors whose debts are secured by pledge, hypothecation or other lien duly entered of record in the proper office, shall have no vote in the deliberations which shall take place on the subject of agreeing to a compromise.

ART. 521. If from the examination of the acts, books, and papers of the insolvent debtor, there shall appear some reason to presume that he is in a state of *bankruptcy*, no compromise can in such case take place between him and the creditors, and every compromise or composition made under such circumstances, shall be null and void; the commissioner shall attend to the execution of the present provision.

ART. 522. If a composition be agreed to, it must be concluded and signed during the sitting, otherwise it shall be null and void: if it be agreed to by the majority in number of the creditors present, but such majority does not amount to three fourths in value of the whole, the consideration thereof shall be postponed for one week, but no longer.

ART. 523. The creditors, who do not agree to the composition, shall be bound to notify their opposition to the syndics and to the debtor within one week at farthest.

ART. 524. The composition shall be confirmed (181) within eight days after the court shall have decreed on the validity of the opposition. The confirmation shall make it obligatory on all the creditors, and shall secure to each of them a lien on the real property of the debtor, and in conseqnence thereof, the syndics shall be bound to cause the decree of confirmation to be entered of record at the hypothecation office, unless there be a clause in the agreement to the contrary.

ART. 525. The confirmation of the composition being notified

however, found sufficiently effectual, and the act was repealed the very next year after its enactment; because, says the repealing statute, *many fraudulent practices had been committed by making pretended agreements with persons who were not real creditors, and for greater advantages than what were expressed in such compositions, which practices had, (as there was just cause to fear) occasioned much perjury.* Stat. 9 & 10 W. 3. c. 29.

However this may be, the system established by the present code, appears to be a compound mixture of the former law, and of the provisions of the English bankrupt statutes, with the addition of a variety of minute formalities and complicated proceedings, and an inquisitorial interference of the government upon the whole, which savours very little of *laissés nous faire.*

(181) *Homologué*, from the Greek ὁμολογέω, *assentior.* In the Territory of Orleans, where the established bankrupt system is on the French plan, the words, *homologate, homologation*, have been lately introduced into the English technical language; but we do not think proper to make use of them in this work, because their meaning is sufficiently conveyed by the legitimate words *confirm* and *confirmation.*

to the provisional syndics, they shall render their final account to the insolvent debtor in the presence of the commissioner; that account shall be debated and closed, and in case of contestation, the tribunal of commerce shall decide. The syndics shall afterwards restore to the said debtor the whole of his property, effects, books, and papers.

The debtor shall give to the provisional syndics a sufficient acquittance and discharge, the duties of the commissioners and syndics shall cease, and the commissioner shall make up a *procès verbal* of the whole transaction.

ART. 526. The tribunal of commerce may, on account of misconduct or fraud, refuse to confirm the composition, and in that case, the debtor shall be remitted of course to the magistrate of public safety to be prosecuted for *bankruptcy*, which the magistrate shall be bound to do *ex officio*.

If the tribunal confirm the composition, they shall declare the debtor excusable and susceptible of being restored to his former rights and capacities, on the conditions expressed in tit. V. entitled *Of rehabilitation*.

SECTION III.

Of the Union of the Creditors.

ART. 527. If no composition be agreed upon, the creditors assembled shall form themselves into a legal body by a contract of union, which shall be settled by a majority in number of the creditors present at the meeting; they shall appoint one or more final syndics and a treasurer, into whose hands all the monies shall be paid. The provisional syndics shall render their accounts to the final syndics in the same manner as the agents are required to do by art. 481.

ART. 528. The syndics shall represent the generality of the creditors, and they shall proceed to the verification of the *bilan*, if there be occasion for it.

They shall by virtue of the contract of union and without requiring any other authority, proceed to the sale of the debtor's merchandise, and of all his real and personal property, and to the settlement and liquidation of his debts and credits; the whole shall be done under the inspection of the commissioner, but the debtor needs not be called or made a party to any of these proceedings.

ART. 529. In every case, the necessary wearing apparel, linen, and other movable articles for the personal use of the debtor and his family, shall be returned to him with the approbation of the commissioner on the proposition of the syndics, who shall make a list of the articles so to be returned.

ART. 530. If there is no presumption of *bankruptcy*, the debtor shall be entitled to receive by way of allowance, for the support of himself and his family, a sum of money out of the proceeds of his estate; the syndics shall propose the amount thereof, which shall

be settled and determined by the tribunal on the report of the commissioner, in a due proportion to the situation and number of the debtor's family, taking also into consideration his good conduct and the amount of the property delivered up to the creditors.

ART. 531. Whenever a union of creditors shall take place, the commissioner of the tribunal of commerce shall lay before them a statement of the circumstances of the failure; the tribunal shall decree on his report as is above prescribed, art. 526, whether or not the debtor is excusable, and whether he is susceptible of being restored by *rehabilitation.*

If the tribunal do not decree in favour of the debtor, he shall be presumed to be in a state of *bankruptcy*, and of course remitted to the magistrate of public safety as is provided by the said article 526.

CHAPTER IX.

Of the Several Classes of Creditors and their respective rights.

SECTION I.

General Provisions.

ART. 532. If there be no action of *expropriation* (182) pending at the time of the nomination of the last syndics, they shall alone be authorized to institute proceedings for the judicial sale of the debtor's real property, and shall be bound to institute the same within eight days, in manner and form as is herein after directed.

ART. 533. The syndics shall lay before the commissioner a list of the creditors, claiming a lien or privilege on the personal pro-

(182) *Action of expropriation.* By this new technical term, which has only been introduced since the revolution into the French law, are meant all the proceedings which take place to compel the judicial sale of real property, by virtue of a judgment or other lien. It begins, as we have already explained, note 82, by the seizure of the property, which is made of course by a ministerial officer, with no other warrant than a copy of the deed or judgment. Then the landholder, if he thinks himself aggrieved, may if he pleases, institute, in the proper court, what is called an *opposition*, and summon the adverse party, to come in and show cause, if any he has, why the seizure shall not be set aside. Thus far this proceeding is analogous to our distress for rent and consequent action of replevin, in which both parties are considered as actors. 2 Mod. 103. 6 Mod. 199. The only difference is that with us, the distress is not considered as a part of the *action*, whereas in France this word, from the Latin *agere*, includes every *act* of the parties done with a view and as preliminary to judicial proceedings. Hence we have seen that the protest of a bill of exchange, and the notice given to the drawer and indorsers of the non-payment, are considered as part of what is called the *action of guarantee;* and in the same manner the abandonment and other formalities prescribed by this code, in matters of insurance, are considered as part of the *action* for the recovery of the loss from the underwriters. On this principle all the adverse proceedings which take place to obtain the compulsory sale of real estate, from the first seizure of the land, until the final distribution of the proceeds, constitute together the *action of expropriation* mentioned in this article. It would be the same thing in America and England, if we were to call the action of replevin by the name of *action of distress*, and to date the commencement of it from the seizure of the tenant's goods for the rent in arrear.

The meaning of the word *expropriation* is sufficiently plain. It is synonymous to the English terms *ejectment* and *ouster*, abstracted from the idea of *tort*, which they technically imply.

perty of the debtor, and the commissioner shall give an order for the payment of their debts out of the first moneys recovered. If there be objections made on the part of some of the creditors, the tribunal shall decide thereon; the costs shall be paid by those whose claims or objections are rejected, and not by the common stock.

ART. 534. A creditor whose debt is secured by a joint and several engagement or contract between the party under failure and other persons, who likewise have failed, shall be entitled to share in the dividends of all the estates, until he be fully paid.

ART. 535. The creditors whose debts are legally secured by pawns or pledges, shall have their names inserted in the general list of creditors, merely by way of memorandum.

ART. 536. The syndics shall be authorized to redeem such pledges for the benefit of the creditors by paying the amount of the debt.

ART. 537. If the syndics do not redeem the pledge and it be sold by the creditor for more than the amount of the debt, the syndics shall be entitled to recover the overplus; and if on the contrary, it be sold for less, the creditor shall be entitled to prove the residue and reserve his proportionable dividend for the same out of the estate, in common with the mass of creditors.

ART. 538. Creditors whose debts are guaranteed by a judicial stipulation or other collateral security, shall be admitted to prove their debts, deducting the amount which they may have received from the security; and the security shall also be admitted as a creditor for so much as he shall have paid in discharge of the debtor.

SECTION II.

Of the rights of the creditors whose debts are secured by hypothecation or lien on real property.

ART. 539. When the distribution of the proceeds of the real estate is made before or at the same time with that of the proceeds of the personal property, those of the privileged creditors who have not been paid in full out of the real estate, shall alone be admitted to prove the remainder of their debts, and come in concurrently with the simple contract creditors (183) for a proportional share of the simple contract fund.

ART. 540. If the sale of the personal property is effected before that of the real estate, and one or more dividends are made out of it before the distribution of the proceeds of the immovable property, the privileged creditors shall share in those dividends proportionably on the whole amount of their respective debts, subject, however, to the eventual defalcation herein after mentioned.

(183) *Créanciers chirographaires*, from the Greek χειρὸγραφον; those whose debts are authenticated by writings not in solemn form, but merely written or subscribed by the party, without any formal authentication. Writings of this description are frequently called in this code, *acts under private signature*, as opposed to *notarial acts* and other matters of record.

ART. 541. After the sale of the real property and the decree fixing the order of distribution between the several privileged creditors, those of the latter, who under that decree shall have been adjudged to receive the full amount of their debts, shall not be entitled to receive that amount except with the deduction of so much as they shall have received out of the simple contract fund.

The sums thus deducted shall be transferred from the hypothecation to the simple contract fund.

ART. 542. With regard to those privileged creditors, who shall have been found entitled only to a partial payment out of the proceeds of the real estate, they shall be considered as simple contract creditors for the residue; but what they shall have previously received, in the way of dividends, from the simple contract fund, shall be deducted from the amount adjudged to be paid to them out of the proceeds of the real estate, and shall be restored to the fund appropriated for the payment of simple contract creditors. (184)

ART. 543. Those of the privileged creditors who shall be excluded from a share in the proceeds of the real estate shall be considered merely as simple contract creditors.

SECTION III.

Of the Rights of Wives.

ART. 544. From and after the publication of this law, the rights of wives, in cases of failure, shall be regulated as follows:

ART. 545. Those who have contracted their marriage under the dotal system, those who hold their estates separately from their husbands, either under their marriage articles or in consequence of a separation *à bonis*, (185) and those who having married under the community system, have not brought their real property into the community stock, shall take back the real estates which they were seized of or entitled to, at the time of their marriage, and those which shall have accrued to them during coverture, by inheritance, or donation *inter vivos*, or *causâ mortis*.

ART. 546. They shall likewise take back the real property purchased by them in their own names with the proceeds of the sales of real estates which came to them by inheritance or donation as aforesaid, provided it be so expressly declared in the contract of

(184) This is done probably in order that the accounts of the several funds may be kept separate and distinct from each other.

(185) *Séparation de biens*, see above, Book 1. Tit. 4. Page 101.

We have already explained above, (note 35, p. 102) that the community stock, that is to say, the property held in common between husband and wife, when married under the *community system*, consists only of their personal property, and such real property, as they jointly purchase during coverture; but we have also explained, note 9, that this general rule may be modified by the parties when they are about to contract, according to their will and pleasure. Hence it frequently happens that only a part of the personal property of one or both parties is vested in the community stock, and on the other hand that real estates of which the parties are seized at the time of marriage, and which consequently are by the general rule excluded from the community, are nevertheless by an appropriate fiction declared in the marriage articles to be *converted into chattels* (*ameublis*) for the pur-

purchase (186) and provided the origin of the said moneys be duly proved by an inventory in due form, or some other authentic document.

Art. 547. Under whatever system the marriage may have been contracted, the law presumes (except only in the case mentioned in the next preceding article) that the property acquired by the wife of a merchant who has failed, belongs to her husband, has been paid for with his own moneys and ought to constitute a part of his estate, unless she can furnish proof to the contrary. (187)

Art. 548. The estates which the wife may retain in conformity to the provisions contained in art. 545 and 546, shall remain subject to the debts, hypothecations and liens charged thereon, whether the wife have been a party to the contracts by which they were created, or they are the effect of a judicial decree.

Art. 549. The wife shall not be entitled to any action against her husband's estate in the case of his failure, by reason of the *advantages* (188) stipulated in her favour by the marriage articles; nor on the other hand shall the creditors avail themselves of the advantages stipulated by the wife in favour of her husband by the same contract.

pose of being held in common between the parties, in the same manner as if they were personal property. In cases of failure and bankruptcy, real property thus assimilated to chattels, goes to the husband's creditors, in the same manner as all the other property held in common between them. But the creditors have otherwise nothing to do with the real estates of the wife. There is nothing at present in the French law in any way analogous to the English tenure by *courtesy*, or to the interest which the husband has in England and America, in the wife's real estate during coverture.

On these principles, if real property accrues to the wife by inheritance, gift or otherwise, during her intermarriage, she holds it in her separate right; but if she acquire it by purchase, and her husband, being a merchant, happen to fail, she is put to the strictest proof, that it was not purchased with his moneys or with the proceeds of the common stock, which is subject to the payment of his debts. See the next article.

(186) Parole evidence is not admitted in France (except in suits for the recovery of small debts) of any fact which might have been proved by written testimony. Hence the multitude of *procès verbaux*, declarations, reports, inventories and other acts of the same kind, the object of which is to record facts, as soon as possible after they have actually happened. As those instruments are in all cases *primâ facie* evidence in favour of the party, who makes or procures them, the absence of them is always considered as a presumption of fraud, and (except in some very particular cases) their deficiency cannot be supplied by testimony not equally authentic.

(187) By authentic or written testimony, but never by parole evidence.

(188) It is customary in France for the husband to stipulate by his marriage articles, certain pecuniary advantages in favour of his wife. Such is the *douaire*, which, like the *morgengabe* of the Germans, and the *dower* of the English law, is considered as *præmium pudicitiæ*. Others, such as what is called the *préciput*, (from *præ* and *captio*) by which is meant a right to take, in preference even to creditors, a certain proportion of the joint goods and chattels or the value thereof in money, are stipulated by both parties in favour of the survivor. Those advantages, however, are only to be enjoyed on the dissolution of the marriage, by death, separation or otherwise. By the French law as it stood before the promulgation of this code, the wife, in cases of failure and bankruptcy, had a special lien and privilege, on all her husband's property, for the above mentioned advantages, the failure being considered as operating a separation of the parties in point of in-

ART. 550. If the wife has paid any of her husband's debts,(189) the law presumes that she has done it with his means, and consequently she is not entitled to be repaid out of the estate, unless she repels the legal presumption by contrary proof, as is mentioned in art. 547.

ART. 551. The wife, whose husband was a merchant at the time of her marriage, has no hypothecation or lien on her husband's general estate, for the money or other personal property which she can prove by authentic instruments to have been brought as a dowry, for the reinvestment of the proceeds of her real property alienated during coverture, nor for any indemnity which she may be entitled to for assuming or paying the debts of her husband; but she only has a lien on such real estate as actually did belong to her husband at the time of marriage. (190)

ART. 552. The same rule is applicable to the wife of a merchant, whose father was also a merchant, but who himself at the time of his marriage was not decidedly engaged in any particular profession or trade.

ART. 553. If the husband, at the time of the celebration of his marriage, was in the exercise of a particular profession other than that of a merchant, and did not engage in trade until after the expiration of the year next following his marriage, the provisions of art. 549 and 551 shall not be applicable to his wife; she shall, on

terest, though the marriage contract otherwise subsisted as before. See above note 31. This flagrant injustice is here very properly prohibited and abolished.

(189) The advantages of which we have already spoken, were not the only claims which by the former law of France, the wife was entitled to on the estate of her bankrupt husband. She would often pretend to have paid his debts out of her separate funds, and no other proof of it was commonly required, but her having taken the receipts in her own name, which was not unfrequently done by collusion between her and her husband, and with a view to impending bankruptcy. A more rigorous mode of proof is prescribed by this code, and if it be not exhibited, the debts are justly presumed to have been paid with the husband's own money.

(190) It frequently happens in France, that when a man marries a young woman with little or no fortune, he nevertheless acknowledges, by the marriage articles, to have received with her, by way of dowry, a sum of money of which she never was possessed. Before this code was enacted, merchants would sometimes, when they married, acknowledge to have received a considerable fortune with their wives; and if they afterwards became bankrupts, the wife was preferred to all the creditors, for the amount so acknowledged. It would also happen, that if the wife of a merchant was possessed of real property in her separate right, she would sell it, the husband would trade and obtain credit with the proceeds, and when he failed, she would claim and obtain a privilege for the reinvestment of those proceeds into other real estate of like value. "Thus," say the counsellors of state, in their address to the French legislature on the subject of this part of the code, "the money, furniture, jewels, plate, every thing passed into the hands of the "wife, and at the moment of a premeditated catastrophe, she, with her fictitious "dowry, her matrimonial advantages, her claims for the amount of debts which "she had never paid, and her pretended separate purchases, absorbed the whole "of her husband's fortune, and the unfortunate creditors were condemned to "spend their lives in poverty and distress, while she was enjoying herself in all "the refinements of luxury." If all the variations which are found in this code, from the ancient system of the French bankrupt law, were similar to the provisions contained in this section, not a single person would be found, in this country, at least, who would not pay to the legislator a merited tribute of unfeigned prais-

the contrary, enjoy all the rights of lien, privilege and hypothecation granted to married women by the Napoleon Code.

ART. 554. All the household goods, furniture, diamonds, pictures, gold and silver plate and other like personal chattels, whether they are appropriated to the use of the husband or of the wife, shall go to the creditors, under whatever system the marriage may have been contracted; nor shall the wife be entitled to receive any part thereof, except her linen and wearing apparel, which shall be allowed to her in conformity to the provisions of art. 529.

She may however take back such jewels, diamonds and plate as she may prove by good and lawful inventories, or by a list annexed to the marriage articles, to have been given to her by marriage contract, or to have accrued to her by succession only.

ART. 555. If the wife shall embezzle, withdraw or secrete any of the articles mentioned in the next preceding article, or any merchandise, cash, bills of exchange, notes or other negotiable paper, she shall be adjudged to make restitution to the creditors, and shall moreover be proceeded against as an accomplice in a fraudulent bankruptcy.

ART. 556. If the wife shall lend her name or assistance to the execution of any act, which may be done by her husband to defraud his creditors, she may, likewise, (according to the nature of the case) be prosecuted as an accomplice in a fraudulent bankruptcy.

ART. 557. The provisions of this section are not retrospective, and shall not affect vested rights at the time of the publication thereof.

CHAPTER X.

Of the Liquidation and Distribution of the Proceeds of the Personal Property.

ART. 558. The proceeds of the collection and sale of the debtor's personal effects and property, after deducting the costs and charges, the allowance made to the debtor, and the moneys paid to the privileged creditors, shall be divided among all the creditors, in proportion to their respective debts duly admitted and proved.

ART. 559. For that purpose, the syndics shall deliver every month to the commissioner a statement of the affairs of the failure and of the moneys at their disposal, and the commissioner shall order a dividend to be made, if the state of the funds warrant it, and shall himself determine the amount to be divided.

ART. 560. The creditors shall be informed of the commissioner's decision, and of the time when the dividends are to be paid.

ART. 561. No payment shall be made, but on the exhibition of the evidences of the respective debts.

The treasurer shall indorse on each voucher the payment that he shall make thereon, and the creditors shall sign a receipt for the same in the margin of the general statement of the dividends.

ART 562. When the liquidation shall be terminated, the syndics shall call a meeting of the creditors, at which the commissioner

shall preside: the syndics shall there render their accounts, and the balance remaining in their hands shall be finally distributed.

ART. 563. The meeting of creditors may, in any stage of a cause, with the authorization of the tribunal of commerce, and due notice given to the debtor under failure, make any composition or compromise, and even alienate any debts or claims, actions and rights of action yet depending and not finally recovered. In such case, the syndics shall sign and execute all the necessary acts and instruments.

CHAPTER XI.

Of the Mode of Proceeding to the Sale of the Debtor's Real Property.

ART. 564. The syndics of the meeting of creditors shall, with the authorization of the commissioner, proceed to the sale of the debtor's real property, in the manner and form prescribed by the Napoleon code, for the sale of the estates of minors.

ART. 565. During the space of one week after property shall have been struck off or *adjudicated* at a public sale, every creditor shall have a right to bid above the purchaser, provided such bid exceeds, by one tenth part, the sum for which the property was struck off.

TITLE II.

Of a General Assignment, or CESSIO BONORUM. (191)

ART. 566. A general assignment of property, or *cessio bonorum*, by a debtor who has failed, and is in a state of insolvency, is either voluntary or judicial.

ART. 567. The effects of a voluntary assignment depend on the contract or agreement, which takes place between the debtor and his creditors. (192)

(191) *Cession de biens.* The *cessio bonorum*, or discharge of an insolvent debtor from imprisonment, on his making a general assignment of all his property for the benefit of his creditors, is borrowed from the Roman system of jurisprudence. It was established at Rome by the Julian law *de bonis cedendis*, which was afterwards confirmed and improved upon by the rescripts of several emperors, and particularly of Justinian, who made several wise and humane regulations upon the subject, and reduced it into a regular system, the details of which are preserved in the Code.

When an unfortunate debtor applied for the *miserabile auxilium*, as Justinian humanely calls it, of the Julian law of *cessio bonorum*, the creditors were called together, to deliberate whether they would grant to him a letter of license for a reasonable time, (*tempus indulgere*) which was generally a period of five years, (*quinquennale spatium*,) and leave him during that time at full liberty and free from every restraint (*omni corporali cruciatu semoto*); or receive from him a general assignment of all his property, (*cessionem accipere*) and discharge him altogether and for ever from imprisonment. On this deliberation, the sentiment of a majority in value was to prevail. If equally divided, then that of a majority in number; and if again divided, then the judge decreed a letter of license, as the milder course. Cod. Lib. 7. Tit. 61. l. 8.

(192) That is to say, between him and a legal majority of his creditors;—for, a *voluntary assignment*, in the sense in which it is generally understood in this country, by which an insolvent debtor assigns over his property to persons of his choice,

Art. 568. A judicial assignment or cession does not extinguish the rights of action of the creditors against the estate and property, which the debtor may subsequently acquire. It has no other effect than to release him from imprisonment and prevent his being again imprisoned for the same debts. (193)

Art. 569. A debtor who wishes to be admitted to the benefit of cession must make application to the tribunal, who shall cause all the necessary documents to be laid before them. The application shall be inserted in the newspapers; as is provided by art. 683 of the code of civil proceedings.

Art. 570. Such application shall not prevent or suspend the effect of any suit or legal process; but the tribunal may, after hearing the parties, issue a provisional order to stay proceedings.

Art. 571. The debtor admitted to the benefit of *cessio bonorum* shall be bound to make or reiterate his cession in person, and not by attorney, in the presence of his creditors, at the sitting of the tribunal of commerce of the place where he resides; and if there is no tribunal of commerce, at a sitting of the municipal council. (194) His declaration shall, in the latter case, be evidenced by the *procès verbal* of the *huissier*, attested by the mayor.

Art. 572. If the debtor is in confinement, the decree admitting him to the benefit of cession, shall contain an order to bring him into court, with the usual and necessary precautions to prevent his escape, in order that he may make his declaration, agreeably to the preceding article.

Art. 573. The names, surnames, profession and place of residence of the debtor, shall be inscribed on tablets made for that purpose, and hung up in the hall where the tribunal of commerce holds its sittings, or in that of the civil tribunal where there is no tribunal of commerce, and also in the hall of the municipal council and at the public exchange.

Art. 574. The creditors may, in execution of the decree which admits the debtor to the benefit of *cessio bonorum*, proceed to the sale of his real and personal property. Such sale shall be made

preferring such of his creditors as he thinks proper, and imposing terms and conditions upon the remainder, would be considered in France as fraudulent, and of course null and void.

(193) This is almost literally copied from the provisions of the Digest and Code. *Qui bonis cesserint, nisi solidum creditor receperit, non sunt liberati. In eo enim tantùmmodo hoc beneficium eis prodest, ne judicati detrahantur in carcerem.* Cod. Lib. 7. Tit. 6. l. 1. *Is, qui bonis cessit, si quid postea adquisierit, in quantum facere potest, convenitur.* Dig. lib. 42. Tit. 3. l. 4.

(194) Formerly, in France, the benefit of *cessio bonorum* was granted to the insolvent debtor *at the foot of the pillory*; and at an era not very remote, the decree by which the debtor was admitted to the benefit of that law, always contained a clause, that he should wear a *green cap*, as the evidence of his discharge, on pain of being again arrested by his creditors, when found without it. *Jousse*, Comment. on the Ord. of 1673, p. 179. In former times, the wearing of this badge of disgrace was strictly insisted upon; afterwards it was sufficient to carry it in the pocket, and at last it was generally dispensed with; but to this day, the *bonnet vert* is, in France, a term of reproach, frequently made use of, in allusion to an insolvent debtor or bankrupt.

in the manner and form prescribed for sales by the meeting of creditors.

ART. 575. The following persons shall not be admitted to the benefit of cession, to wit: 1. Those guilty of *stellionate*, (195) fraudulent bankrupts, persons convicted of theft or swindling, factors, and other accountable agents.

2. Foreigners, guardians, administrators, trustees and depositaries. (196)

TITLE III.

Of Stoppage IN TRANSITU (197) *and in the hands of the Consignee.*

ART. 576 The vendor may, in case of failure, reclaim the merchandise by him sold and delivered, and for which he has received no payment, under the circumstances and on the conditions herein after specified.

ART. 577. The right to re-claim only takes place while the merchandise is yet *in transitu*, either by land or water, and before it has been delivered into the stores of the purchaser who has failed,

(195) This is a term of the civil law, synonymous to the English word *swindling;* but it is more particularly applied to those who sell property which does not belong to them, or who knowingly mortgage their own estate beyond its value, without giving notice of the prior liens. It is derived from the Latin *stellio*, which means a little animal of the lizard kind, said to be very cunning.

(196) Similar exceptions are generally made in the statutes enacted in England for the relief of insolvent debtors. See Stat. 21 Geo. 3. c. 63. § 36. 37.

(197) The title of this subdivision is in the original *de la revendication*, which word, from the Latin *vindicatio*, used in the sense in which it means the *assertion of a claim* and coupled with the iterative particle *re*, is the head of a very extensive title in the French law, and includes every case in which a man may *re-claim* his property, after having parted with it. In this code it is only applied to cases that are connected with failure or bankruptcy. The principal, whose factor becomes insolvent, is allowed to *re-claim* his goods before they come to the hands of the latter, and even while they remain in his possession unsold, and in the same condition in which he received them; and the vendor, whose consignee fails before the property comes into his possession, is permitted in like manner to claim them while on their passage from him to the bankrupt vendee. The first of these two principles has always been recognized in the English law, and the latter had been indeed, sometimes acted upon in the court of Chancery in England, but was not until lately introduced into the common law courts, where it has received the denomination of *stoppage in transitu.* This code very properly classes these two rules under the same general head, as they are in fact connected together by the closest analogy. But there being no term in the English language entirely applicable to them both, we have thought it best to include them together within the general descriptive term of *stoppage*, coupled with words expressive of its application to the particular cases.

By the French law, as it stood before the publication of this code, not only goods consigned to a factor, to be disposed of for the benefit of the principal, were allowed, if the factor became bankrupt, to be stopped or reclaimed; but goods actually sold and delivered to him might be claimed in like manner, provided they remained in the same condition as when they were delivered. *Abbott on Ship.* 352. *Domat's* Civ. Law, book 4. tit. 5. §2. art. 3. This widely extended principle is now limited to the rule established by the law of England, which, no doubt was in the contemplation of the French legislators when this code was framed. Thus the doctrine of *revendication* in mercantile cases, first borrowed in part by the English law from the French system of jurisprudence, has been modelled in France to the shape and reduced to the extent, that it had received in England.

or those of the factor or agent, who is commissioned to sell the same for his account.

ART. 578. Merchandise cannot be re-claimed or stopped *in transitu*, if it has been *bonâ fide* sold with transfer and delivery of the invoices, bills of lading or carriage bills.

ART. 579. The vendor who re-claims merchandise, by virtue of this law, shall be bound to indemnify the estate of the vendee for all advances made by the latter on account of the freight, carriage, commission, insurance or any other charges, or to pay the same, if they are yet unpaid.

ART. 580. No merchandise can be thus re-claimed, but such as shall be acknowledged to be identically the same; and only when it shall appear that the bales, hogsheads or wrappers, in which it was inclosed, at the time of the sale, have neither been taken away nor changed, and that the merchandise has not suffered any change or alteration in its nature or quantity.

ART. 581. Goods consigned to the party in a state of failure, by way of deposit, or to be sold for the account of the consignor, may be re-claimed, as long as they remain in his hands or at his disposal; and in the latter case, the money arising from the sale thereof may be claimed, if not yet paid to the consignee, or carried to account current between him and the purchaser.

ART. 582. In all cases of stoppage or *claim* (except those of goods consigned or deposited), the syndics of the creditors shall have a right to retain the merchandise claimed, on paying to the claimant the price agreed upon between him and the insolvent party.

ART. 583. Remittances made in negotiable or other securities not yet due, or still remaining unpaid, and which shall be found in the possession of the debtor at the time of his failure, may be stopped or re-claimed; if such remittances were made by the owner merely for collection, and that the money might be kept at his disposal or applied to the payment of his acceptances, or notes payable at the debtor's domicile.

ART. 584. Similar remittances may, in the same manner be re-claimed, although made without any special acceptance or appropriation, if they are entered in an account current in which the owner appears only on the creditor side; but otherwise, if at the time of making the remittance, he was indebted to the consignee in any sum whatever.

ART. 585. In all cases in which the law permits the stoppage or re-claiming of merchandize, the syndics shall inquire into the nature and circumstances of the claim, and may admit the same with the commissioner's approbation; if any contest shall arise, the tribunal shall decide, after having heard the commissioner.

TITLE IV.

Of Bankruptcy.

CHAPTER I.

Of Simple Bankruptcy.

ART. 586. Every merchant in a state of failure, coupled with any of the circumstances herein after mentioned, SHALL be (198) prosecuted for and may be convicted of the offence of simple bankruptcy, to wit:

1. If his household expenses, which he is bound to enter in his day-book, month by month, are adjudged excessive.
2. If it be proved that he has wasted considerable sums in gaming, or in enterprises entirely depending upon chance.
3. If it appear, from his last inventory, that his effects or means of payment being 50 per cent. less than the amount of his debts, he has borrowed considerable sums of money, and if he has re-sold goods at a loss or below the market price.
4. If he has issued or indorsed bills or notes to an amount equal to three times that of his property or effects, according to his last inventory.

ART. 587. A merchant in a state of failure MAY be (199) prosecuted for simple bankruptcy and convicted thereof,

If he has not made in the registry of the tribunal of commerce the declaration required by art. 440.

If, after absconding or departing from the place of his usual residence, he has not appeared in person before the agents and syndics, within the periods limited by law, unless prevented by legal impediments.

If the books which he exhibits are not regularly kept, even though the irregularities should not induce any presumption of fraud; or if he keeps back any of his books.

If, being a member of a partnership, he has not conformed to the rules prescribed by art. 440.

ART. 588. Cases of simple bankruptcy shall be tried and determined by the tribunals of correctional police, on the complaint of the syndics, or of any of the creditors, or on the official information of a competent magistrate or law officer of the government.

ART. 589. The costs of prosecution in cases of simple bankruptcy shall be borne by the creditors, if the proceedings have been instituted on the complaint of the syndics.

(198) *Shall be prosecuted.* This article is imperative, and makes it the indispensable duty of the public officers to prosecute those who appear to have been guilty of any of the acts that it describes; while the subsequent article (587) leaves it in their discretion to prosecute or not, according to circumstances, in the cases therein mentioned. The same distinction between the cases in which the party *may be*, and those in which he *shall be* prosecuted, is made in the next chapter concerning fraudulent bankruptcy.

(199) See the preceding note.

ART. 590. If on the complaint of a creditor, he shall pay the costs if the party be acquitted; and if convicted, the said costs shall be paid by the creditors.

ART. 591. The imperial attornies are bound to appeal from all judgments of the tribunals of correctional police; if, from the facts appearing in the course of the investigation, they have discovered that there is sufficient ground to prosecute the culprit for fraudulent bankruptcy. (200)

ART. 592. The tribunal of correctional police, at the same time that they declare the party guilty of the offence of simple bankruptcy, shall, according to the circumstances of the case, sentence the convicted party to imprisonment for a term not less than one month, and not more than two years. (201)

The judgments shall be moreover posted up, and published in a newspaper; agreeably to the directions of art. 683 of the code of civil proceedings.

CHAPTER II.

Of Fraudulent Bankruptcy.

ART. 593. Every merchant in a state of failure, coupled with any of the circumstances herein after mentioned, SHALL be convicted of the crime of fraudulent bankruptcy, to wit:

1. If he has returned fictitious losses and expenditures, and does not satisfactorily show how he has disposed of all the moneys that have come to his hands.
2. If he has fraudulently kept back any sum of money, credit, merchandise, or other personal property.
3. If he has made any fictitious sales, gifts, or negotiations.
4. If he has by fraud and collusion made fictitious creditors, either by means of false book entries, or of authentic or private acts, or instruments of writing made without consideration.
5. If he has violated his trust, by applying to his own use moneys, negotiable paper or merchandise, which he had received by virtue of a special authority from another per-

(200) This is called an appeal *à minimâ*, that is to say, *à minimâ ad majorem pœnam*, and may be brought in all cases, in which the prosecuting officer presumes that a punishment proportioned to the nature of the offence has not been inflicted by the first sentence.

If from the evidence the party appears to have been guilty of a higher offence, than that for which he stands indicted in the inferior court, the charge against him is varied in the court above, so as to agree with the facts that appear in proof.

As *simple bankruptcy* is triable by the tribunals of correctional police, and fraudulent bankruptcy by the criminal tribunals, and of course *by jury*, since that mode of trial still subsists in France in ordinary criminal cases, it is to be presumed, that the appeal is but the formal mode of transferring the cause from one tribunal to the other, where it is to be proceeded in *de novo*, and the party being brought into the Superior Court, may be indicted there anew for any crime or offence within its jurisdiction.

(201) The same penalty is imposed on *simple bankrupts*, by the penal code, art. 402.

son, or which had been deposited into his hands for safe keeping, or to be applied to some specific purpose.

6. If he has purchased real or personal property by means of a borrowed name.
7. If he has secreted his books.

ART. 594. A merchant in a state of failure MAY be prosecuted for fraudulent bankruptcy and be convicted thereof,

If he has kept no books, or if his books do not exhibit the real state of his debts and credits.

If, having obtained a letter of license, he has not appeared in person, when legally summoned.

ART. 595. Cases of fraudulent bankruptcy shall be prosecuted *ex officio* before the tribunals of criminal jurisdiction, by the imperial attorneys and their deputies, either on the strength of public notoriety or on the denunciation of the syndics, or of one of the creditors.

ART. 596. If the party accused be convicted of the crimes mentioned in the preceding articles, he shall suffer the pains and penalties of fraudulent bankruptcy as provided in the penal code. (202)

ART. 597. Those who shall be convicted of aiding and abetting a fraudulent bankrupt, in the concealment of the whole or any part of his real or personal property, or of having consented to appear as fictitious creditors of such bankrupt, and who at the time of proving their pretended debts, shall have persevered in asserting them to be genuine and true, shall be considered as accomplices of the fraudulent bankrupt, and shall suffer the same punishment.

ART. 598. In addition to the punishments prescribed by law, the accomplices of fraudulent bankrupts shall moreover be adjudged,

1. To restore to the creditors the property, rights, and claims fraudulently subtracted.
2. To pay to the said creditors, by way of damages, a sum of money equal to the amount of which they had attempted to defraud them.

ART. 599. The sentences of the courts of criminal jurisdiction against bankrupts and their accomplices shall be posted up and published in a newspaper, agreeably to the directions of art. 683 of the code of civil procedure.

CHAPTER III.

Of the Administration of the Bankrupt's Estate.

ART. 600. No civil rights or claims whatever (except those mentioned above, art. 598) shall be brought forward or decided

(202) The penalty imposed by the penal code on *fraudulent bankrupts*, is that of hard labour for a limited time. Pen. Cod. Art. 402. It cannot be for less than five years, nor more than twenty. Ibid. Art. 19. Exchange agents or brokers, convicted of simple bankruptcy, are sentenced to the same punishment; and if they have been guilty of *fraudulent bankruptcy*, they are condemned to hard labour for life. See above, Note 42.

upon, in prosecutions for simple or fraudulent bankruptcy, or in any way be intermixed or blended with such prosecutions, or the judgments that shall be given therein; (203) but all such rights and claims shall be and remain distinct and separate; and all the provisions of this law relating to the estate and property of insolvent debtors, shall be carried into execution in manner as herein directed; nor shall the tribunals of criminal jurisdiction or correctional police take or draw to themselves in any manner the cognizance thereof, by way of original suit, appeal, removal, or otherwise.

ART. 601. The syndics of each bankruptcy shall nevertheless, be bound to deliver to the imperial attorneys and their deputies, all the papers and documents, and to give them all the information that they shall require.

ART. 602. The documents, papers and vouchers, delivered by the syndics, shall, during the pendency of the suit, be deposited in the registry, in order to be communicated to whom it may be proper; such communication shall take place on the requisition of the syndics, who may make private extracts from the said documents, or demand official extracts or copies thereof, which shall be delivered by the register.

ART. 603. The said documents, papers and vouchers, shall, after judgment, be returned to the syndics, who shall give a sufficient discharge for the same, such only excepted, as the court shall order to remain deposited of record.

TITLE V.

Of Rehabilitation. (204)

ART. 604. All petitions for the *rehabilitation*, or restoration to his former rights of a merchant who has been in a state of failure, shall be addressed to the court of appeals of the circuit in which he resides.

ART. 605. He shall be bound to annex to his petition the acquittances and other documents or vouchers, proving that he has paid the whole of his debts with interest and costs.

ART. 606. The attorney general of the court of appeals, to whom the petition shall be communicated, shall send copies thereof certified by himself to the Imperial attorney of the civil tribunal and to the president of the tribunal of commerce of the place or district wherein the debtor resides; and if the debtor has removed to another place since his failure, then also to the tribunal of commerce of the district where it took place, and shall require them to collect all the information in their power concerning the truth of the facts set forth in the said petition.

(203) In the courts of civil law, civil and criminal proceedings are often blended together, and the same sentence which condemns the party to punishment, not only awards restitution and damages to the injured party, but many incidental matters merely of a civil nature are often decided upon in a criminal proceeding. On the other hand, when a suit is brought, as we would say, on the *civil side* of the court, and criminal matter appears to result from the facts or evidence in the cause, a criminal prosecution is instituted, *quasi*, as a branch of the original suit, and that is called *procéder à l'extraordinaire*.

(204) See above, Note 40.

ART. 607. The imperial attorney and the president of the tribunal of commerce, shall in consequence thereof, see that a copy of the said petition remain posted up for the space of two months, in the halls where the respective courts hold their sittings, at the public exchange, and in the hall of the municipal council, and the substance thereof shall be inserted in the newspapers.

ART. 608. Any one of the creditors who shall not have been fully paid his debt with interest and costs, or any other interested party, may while the petition remains posted up, file their objections in the registry against the rehabilitation prayed for, together with the vouchers in support thereof, if any they have; the objecting creditor, however, can never be a party in the suit for rehabilitation, but this is not to be understood to operate in any manner to the prejudice of his other rights.

ART. 609. The aforesaid period of two months being expired, the imperial attorney and the president of the tribunal of commerce, shall separately transmit to the attorney general of the court of appeals, the information which they shall have collected, the objections which shall have been made, and the facts which may have come to their own individual knowledge respecting the conduct of the petitioner; they shall also give their advice on the subject of his petition.

ART. 610. The attorney general of the court of appeals shall, upon a review of the whole, cause a decree to be made, admitting or rejecting the prayer of the petitioner; if it is rejected, it can never again be brought forward.

ART. 611. If the rehabilitation is granted, the decree shall be transmitted to the imperial attornies and presidents of the several tribunals to whom the petition was previously sent. Those tribunals shall cause the same to be read in open court, and to be entered among their records.

ART. 612. Those who have been guilty of *stellionate*, (205) fraudulent bankrupts, persons convicted of theft or swindling, and those, who being accountable to others, such as guardians, administrators, trustees and depositaries, shall not have rendered or settled their accounts, shall not be admitted to the benefit of *rehabilitation*.

ART. 613. A simple bankrupt, after suffering the punishment to which he has been sentenced, may be admitted to the benefit of rehabilitation.

ART. 614. A merchant who has failed can never appear on the public exchange, until he has obtained a decree of rehabilitation.(206)

(205) See above, Note 195.

(206) Many other disabilities, though not mentioned in this Code, are yet imposed by the French law on merchants in a state of failure or bankruptcy, until they are restored to their former rights by the decree of a competent tribunal. They are incapacitated from holding any civil office, Ord. 1673. Tit. 9. Art. 15. Jousse, 175.—In all the constitutions which France has successively adopted since the revolution, there is a clause to the same effect; and that of 1799, which is said to be now in force, as far as it has not been altered or modified by *organic senatus consulta*, contains this express clause: "The exercise of the rights of a French "citizen is suspended by bankruptcy or failure, *par l'état de débiteur failli*, Const. 1799. Art. 5. They are moreover disabled from being exchange agents, brokers, testamentary executors, trustees, or guardians; and every letter of attorney made to a person who afterwards becomes bankrupt, does by this kind of civil death become null and void. Jousse 182.

BOOK IV.

Of the Courts of Commercial Jurisdiction.

TITLE I.

Of the Organisation of the Tribunals of Commerce.

ART. 615. The number of tribunals of commerce and the several towns which, by the extent of their trade or manufactures, are entitled to have one, shall be determined by a regulation of public administration.

ART. 616. The jurisdictional district of each tribunal of commerce shall be the same as that of the civil tribunal within the limits of whose jurisdiction it shall be established; and if there be several tribunals of commerce within the jurisdictional limits of one civil tribunal only, particular districts shall be assigned to them respectively.

ART. 617. Each tribunal of commerce shall consist of one president and a competent number of judges and substitutes. (207) The number of judges cannot be more than eight, nor less than two; the president not included. That of the substitutes shall be in proportion to the business to be done. The number of judges and substitutes for each tribunal, shall be determined by a regulation of public administration.

ART. 618. The members of the tribunals of commerce shall be elected by an assembly composed of respectable merchants, and particularly of the heads of commercial houses of long standing, and who are generally esteemed for their integrity, industry, and economy.

ART. 619. The prefect shall make a list of persons of the above description, whom he shall select from among all the merchants of the district and shall send to the minister of the interior for his approbation: their number cannot be less than five and twenty in towns the population of which does not exceed fifteen thousand souls; in other towns and cities it must be augmented at the rate of one elector for every thousand souls.

ART. 620. Any merchant may be appointed a judge or substitute if he is thirty years of age, and has carried on trade and commerce with honour and distinction for the last preceding five years. The president must have attained the age of forty years, and shall only be chosen from among those who have been judges, including not only those who have exercised the judicial functions in the existing tribunals, but even those who have been *consuls* (208) under the old establishment.

(207) The French term is *suppléants*, which we think we cannot translate better than by the word *substitutes;* their office is very similar to that of the master of the rolls in the English court of Chancery, who sits and hears causes when the lord Chancellor cannot attend in person.

(208) Before the revolution the subjects which now constitute the jurisdiction of the tribunals of commerce were divided between two different courts. The courts of Admiralty had cognizance of all matters relative to shipping and maritime contracts, such as freight, insurance, bottomry, material-men, mariners' wages and

ART. 621. The election shall be made by ballot, and by the positive majority of votes. The president shall be voted for separately.

ART. 622. At the first election, the president and one half of the judges and substitutes of which the tribunal shall be composed, shall be chosen for two years, and the other half for one year: At the subsequent elections, all the nominations shall be made for two years.

ART. 623. The president and judges cannot remain in office longer than two years, nor be re-elected but after the interval of one year.

ART. 624. Government shall appoint a clerk or register, and *huissiers* for each tribunal, whose rights, fees, and duties shall be determined by a regulation of public administration.

ART. 625. Special officers, denominated *gardes du commerce*,(209) shall be established, for the city of Paris only, whose duty it shall be to execute the decrees of the tribunal of commerce, which are to be enforced by arrest or imprisonment; their organisation and the extent of their authority shall be determined by a special regulation.

ART. 626. The decrees of the tribunals of commerce shall be pronounced by at least three judges. No substitute can be called in, except to complete that number.

ART. 627. Agreeably to the 414th article of the code of civil proceedings, attorneys are not allowed to practise in the tribunal of commerce. (210) No person can be admitted to defend a cause before those tribunals, unless thereto authorized by the party in person and in open court, or unless he exhibits a special warrant of attorney from such party; which power may be indorsed on the original or a copy of the summons, and shall be exhibited to the register before the hearing of the cause, and by him inspected and signed *gratis*.

ART. 628. The functions of the judges are merely honorary.

ART. 629. They are sworn, before entering upon the exercise of their judicial functions; the oath is taken before the court of appeals when it holds its sittings within the town where the tribunal of commerce is established. In the contrary case, the court of appeals, on the application of the commercial judges, empowers the civil tribunal of the district to administer the oath; in that case,

the like; while bankruptcy, partnerships, merchants' accounts, bills of exchange, promissory notes and other matters relative to the land trade, were within the jurisdiction of a special tribunal established in each of the principal manufacturing and commercial towns, under the denomination of *Juges Consuls*. Their organization and mode of appointment were nearly the same with that of the tribunals of commerce under the present code, who are in fact the ancient *Consular Courts* revived, and having in addition to their former jurisdiction, that of an *instance court of Admiralty*.

(209) These were first established under Lewis XVI, by an edict made in the year 1778: their functions had been suspended during the revolution.

(210) The party may appear in court attended by a friend, or he may be represented by virtue of a special letter of attorney, but no person is allowed to appear for him in a *legal character;* the proceedings there being summary, and *ex æquo et bono*. The same rule prevails in Spain, before the courts of the *Prior and Consuls*, which are the commercial tribunals of that country. Ord. of Bilboa, c. 4. Art. 6

the civil tribunal makes a *procès verbal* of the transaction, and transmits it to the court of appeals, who order it to be filed of record in their registry. All this is done with the advice of the law officer of the crown and without costs.

Art. 630. The tribunals of commerce are within the sphere of the authority, and under the superintendance of the grand judge minister of justicc.

TITLE II.

Of the Jurisdiction of the Tribunals of Commerce.

Art. 631. The tribunals of commerce shall take cognizance,

1. Of all suits relative to engagements and transactions between merchants, traders and bankers.
2. Of suits relative to commercial acts.

Art. 632. The law recognises as commercial acts:

Every purchase of merchandise or produce to be sold again, either in its natural state or after undergoing some manufacturing process, or even merely to be let out to hire:

All manufacturing establishments; all private or public contracts or undertakings for the supply of merchandise or of specific articles; agencies for the conveyance of goods by land or water, for the sale of goods on commission, or for the transaction of business in general, or in any particular line; sales at auction, and theatrical exhibitions;

Every kind of business in the way of exchange, banking and brokerage;

All the transactions of public banks;

All engagements between merchants, bankers and traders;

Bills of exchange and remittances of money from place to place, between persons of any description.

Art. 633. The law recognises likewise as commercial acts:

All contracts for the building, and all purchases, sales and resales, of ships and vessels for maritime or inland navigation;

All maritime outfits and shipments;

All sales or purchases of rigging, tackle, apparel and provisions.

Every contract of affreightment, maritime loan, insurance, and generally all contracts concerning maritime trade;

All agreements for the hiring and wages of seamen;

All engagements of seamen to serve on board of merchant vessels.

Art. 634. The tribunals of commerce shall likewise take cognizance;

1. Of suits brought against factors, clerks or servants of merchants, so far only as concerns the business of their employers;
2. Of notes given by collectors of taxes and others being in the receipt of public moneys. (211)

(211) These are promissory notes or bills of exchange drawn by the collectors of taxes on themselves, in anticipation of the public revenue. They are thrown into circulation, and received in payment of imposts and duties.

ART. 635. And lastly, they shall take cognizance;

1. Of all matters concerning the delivery of the *bilan* and commercial books of a merchant under failure, and of the proof and verification of his debts;
2. Of all oppositions to the confirmation of a deed or articles of compromise between the debtor and his creditors in a case of failure, when the particular facts on which the opposition is founded are within the proper cognizance of commercial tribunals.

   In all other cases, such oppositions shall be decided on by the civil tribunals.

   In consequence thereof, all exceptions filed or exhibited against a compromise, shall contain the reasons of the opponent, otherwise shall be null and void.
3. Of the confirmation of deeds or articles of compromise made between a debtor and his creditors in cases of failure;
4. Of cases of *cessio bonorum* so far only as belongs to the jurisdiction of tribunals of commerce, by virtue of art. 901 of the code of civil proceedings. (212)

ART. 636. Whenever bills of exchange operate merely as simple contracts, as is mentioned above, art. 112, or when promissory notes payable to order shall be subscribed or indorsed only by individuals not engaged in trade, and shall not have been given in the course of a commercial or banking transaction or for some consideration resulting from traffic, exchange or brokerage, the tribunal of commerce shall be bound to transfer the cause to the civil tribunal, if thereto required by the defendant.

ART. 637. If the bills of exchange or promissory notes bear at the same time the signatures or indorsements both of merchants and of persons not in trade, the tribunal of commerce shall take cognizance thereof; but they shall not insert in their decrees the clause of coercion by imprisonment against those who are not merchants, unless they have subscribed or indorsed the bill or note in the course of a commercial or banking transaction, or for some consideration resulting from traffic, exchange or brokerage.

ART. 638. The tribunals of commerce shall not take cognizance of suits against owners or tenants of landed property, on account of the sale of produce raised upon their estates, or against merchants for articles purchased for their own personal use.

Nevertheless, all notes subscribed by a merchant, shall be considered to have been given in the course of his commercial dealings; and those subscribed by collectors of taxes, paymasters or other persons in the receipt of public moneys, shall be considered to have been given in the course of their official business, unless the contrary appear on the face of the writing.

(212) The article here referred to is the same with art. 571 of this code. It ought to be observed that by art. 442 of the code of civil proceedings, the tribunals of commerce cannot take cognizance of the execution of their own judgments. They are no more than the *evidence of a debt;* conclusive, indeed, when not appealed from, but all proceedings arising out of a seizure or arrest made in execution of them, belong exclusively to the jurisdiction of the civil tribunals.

ART. 639. The tribunals of commerce shall decide without appeal:

1. All suits and demands not exceeding the amount or value of 1000 francs.
2. All suits in which the parties, being amenable to their jurisdiction, and in the full exercise of their civil rights, shall agree to abide by the judgment of the tribunal, and waive the right to appeal therefrom.

ART. 640. In those districts in which there is no tribunal of commerce, the civil tribunals shall exercise the functions and jurisdiction thereof.

ART. 641. The proceedings in such cases, shall be carried on in the same form as they would have been before the tribunals of commerce, and the decrees shall be equally effectual.

TITLE III.

Of the forms of Proceeding before the Tribunals of Commerce.

ART. 642. The forms of proceeding before the tribunals of commerce shall be those which have been regulated by the code of civil proceedings, part 1. book 2. tit. 25.

ART. 643. Nevertheless, the articles 156, 158, and 159 of the same code (213) relative to judgments by default rendered by inferior tribunals, shall be applicable to the judgments by default which shall be rendered by the tribunals of commerce.

ART. 644. Appeals from the judgments or decrees of the tribunals of commerce, shall be carried to the appellate courts of the circuits in which they are respectively situated. (214)

TITLE IV.

Of the forms of Proceeding before the Courts of Appeals.

ART. 645. The term of three months is allowed for appealing from the judgments or decrees of the tribunals of commerce; to be computed in the case of final judgments, from the day of the notification thereof, and in cases of judgments by default, from the expiration of the term prescribed for entering an opposition to the same. The appeal may be entered on the same day that the judgment is given.

ART. 646. The appeal shall not be admitted when the principal sum does not exceed in amount or value 1000 francs, though the decree should not express that it is given finally and without appeal, or should even reserve or allow to the parties the right of appealing therefrom.

(213) The articles here cited refer to mere matters of practice, of no kind of interest to the American reader.

(214) An error has inadvertently crept in Note 27. p. 99. where it is said "that there is in France one tribunal of appeals *in each department.*" It ought to be read *for several departments.*

Previous to the annexation of Holland and the Hanse Towns, there were in France thirty-three courts of appeals, each having within its jurisdiction a certain number of departments. It is probable that their number has been increased since that event.

ART. 647. The courts of appeals cannot in any case, suspend the execution of the decrees of the tribunals of commerce, on pain of nullity, and even of being adjudged to pay damages to the parties, even though the competency of the said tribunals should be contested or denied; but they may, according to the exigency of the case, grant an extraordinary summons or citation and appoint a day and hour for hearing the parties on the merits of the appeal.

ART. 648. Appeals from the judgments of the tribunals of commerce shall be proceeded in as in summary causes. (215) The proceedings from the entering of the appeal to the final decree inclusively, shall be conformable to the forms prescribed for appeals in civil causes by the 3d book of the first part of the code of civil proceedings.

(215) The distinction between *plenary* and *summary* causes in courts, which proceed according to the civil law, is sufficiently known. It is, moreover, fully explained in *Consett's* Practice of the English Ecclesiastical courts. Part 1. sect. 2. page 22.

ERRATA.

Page 94. Note 13, line 1. for *paraphé* read *paraphe.*
99. Note 27, line 1. for *in each department*, read *for several departments*
126. Note 85, line 1. for *individual sales*, read *judicial sales.*
138. Note 105, line 2. for *prohibited*, read *prohibited.*
146. for ART. 132, read ART. 332.
154. line 5, of the notes, for *fact*, read *facts.*
158. Note 145, line 2. *dele* comma.
164. Note 151, line 14. for *proof*, read *proofs.*

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